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SOLICITORS' JOURNAL

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CURRENT TOPICS

Payment for Magistrates ?

IT is being suggested that lay magistrates should be compensated for loss of earnings. For several years members of local authorities have been able to claim such losses, up to a low maximum figure. We accept the need to pay jurymen and even some members of the House of Lords have surrendered their amateur status so far as to claim their expenses. Few of us can remember the time when members of the House of Commons were not paid. We have heard it said that there are ostensibly amateur cricketers and tennis players whose means of support apart from something connected with their games are not easily visible. There should be no surprise about all this: it is a consequence of the social revolution of our time and of the disappearance of a leisured class. The proposal to compensate magistrates for loss of earnings, however, raises a question which is unique. The work of lay magistrates can be, and over a substantial part of the country is, done by paid professional lawyers. It is possible that if we retain the system of lay magistrates we shall sooner or later have to accept the responsibility for paying them unless we accept instead the restriction of choice which non-payment imposes. We think it would be a pity to cover the whole country with stipendiary magistrates, but there is much in the argument that if we are going to pay we might as well pay for professionals and not for amateurs. We suggest that there should be a change of attitude on the part of some employers. For many years there have been employers who have encouraged their employees to undertake public work, including appointment to the magisterial bench. We think that this attitude ought to be extended, and before any serious consideration is given to the question of payment we ought to decide two things: first, do we want to keep lay magistrates, and, secondly, have the possibilities of an appeal to employers generally been exhausted ? We think that we might be able to dispose of the problem in this way. Most of the magistrates who are self-employed ought to be able to adjust their work so as to fit in their magisterial duties without serious detriment to themselves. The time which is demanded of magistrates is not large and it is right that public service should involve some sacrifice.

Information for Court about Cases

THE joint responsibility of counsel, counsel's clerk and solicitor to keep the Clerk of the Lists informed about any changes in estimated time of hearing of any case in the Warned List was stressed by the LORD CHIEF JUSTICE in *McRae* v. *Hanson Haulage, Ltd.* and *Kartoon* v. *Roman*

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(*The Times*, 13th February). Any alteration between its publication in the Warned List on a Thursday and the fixing of the Daily Cause List should be notified. It is in the interests of all concerned that the maximum assistance should be given to the officials of the law courts in their desire to make the Fixed List effective. We are pleased to see that, during the discussion of this question in court, it was mentioned that it was very often much more convenient for counsel's clerks to handle matters of that kind than for solicitors who might be some distance away from the law courts. No solicitor, we imagine, will disagree with that observation.

Production of Court Records on Demand

The Times of last Friday drew attention to Ord. 61, r. 17, of the Rules of the Supreme Court providing that proper indexes or calendars to the files or bundles of all documents filed at the Central Office must be kept, so that the same may be conveniently referred to when required, and that such indexes or calendars and documents must, at all times during office hours, be accessible to the public on payment of the usual fee. From this the conclusion was drawn that newspapers have a *prima facie* right to inspect court documents to ascertain whether or not court proceedings about any particular matter are pending. If they are, then of course comment should be withheld and thus any risk of committing contempt of court avoided. Whether the Press will endeavour to take advantage of the rule in order to obtain, for example, background information, remains to be seen. If such attempts are so numerous as to amount to an abuse, it may be that the Rules of the Supreme Court will have to be amended to strengthen the hands of the Practice Masters by, for example, incorporating in those Rules relevant rules of the Practice Masters Rules, such as No. 23 of 1st May, 1950.

Gourley: the Scottish View

As is well known, *British Transport Commission* v. *Gourley* [1956] A.C. 185 established that where damages are awarded for loss of income, which if it had been received would have been taxable as income in the hands of the recipient, the gross amount of damages will be reduced to take account of the plaintiff's tax liability. This rule was considered by the Law Reform Committee and in their seventh report (Cmnd. 501; H.M.S.O., 6d.) a majority took the view that the present law "gives full effect to the well-settled principle that damages for tort or breach of contract are intended to compensate the injured party for the loss that he has suffered." In *Spencer* v. *Macmillan's Trustees* [1958] S.L.T. 39 (noted at p. 588 of vol. 102 of THE SOLICITORS' JOURNAL), the Court of Session found that *Gourley* was a binding authority north of the border and the Law Reform Committee for Scotland was asked to consider the relevance, in a question of the assessment of damages, of any liability to tax of the person entitled to damages, with particular reference to *Gourley's* case. In their recently published sixth report (Cmnd. 635), the committee have made it clear that, like most of their English counterparts, they do not recommend the introduction at present of legislation to reverse the principle laid down in *Gourley's* case, although they suggest that the subject should be considered again after a period of years. However, they recommend that where difficult questions of tax liability arise, the court should be empowered either to order intimation to the Crown with a view to appearance and argument by or on behalf of the Board of Inland Revenue as a party (this is the course which the committee prefer) or to invite the Lord Advocate to attend and present such arguments as might be suggested by the Board. This recommendation is in accord with the procedure suggested by Lord Greene, M.R., in *Asher* v. *London Film Productions, Ltd.* [1944] 1 K.B. 133. In a recent debate in the Lords LORD DOUGLAS OF BARLOCH received virtually no encouragement from the LORD CHANCELLOR when he called attention to what he described as the unsatisfactory state of the law on this subject. The most that the Lord Chancellor would say was that he was prepared, in six or twelve months' time, to consider any new matter. In spite of LORD DENNING'S observation during the debate that the Law Reform Committee had "found a difficulty for every solution," in our view the rule in *Gourley's* case is right, although we still adhere to our opinion that in practice it would be desirable to enact that it should be applied only where general damages in respect of future loss of earnings exceed £5,000.

Absolute Liability

ONE of the topics to which Mr. BUTLER'S new Criminal Law Revision Committee could turn its attention with advantage, when it has rationalised the law of larceny, is the state of the law whereby a person may be convicted of a crime which he has no opportunity of avoiding. In *Winter* v. *Hinckley and District Industrial Co-operative Society, Ltd.* [1959] 1 W.L.R. 182; p. 132, *ante*, the Divisional Court found the defendants guilty of exposing for sale sacks of coal which were of less weight than was represented on the labels on the sacks. The magistrates found as a fact that when the sacks left the defendants' premises they were all of the represented weight but that thereafter the lorry driver in charge of the load stole the quantity of coal by which each sack was found deficient. In many branches of the law absolute liability can be justified on the ground that it ensures a high standard of supervision and inspection. In this case the driver was previously a man of good character so that it could not be contended that the defendants had been careless in their choice of staff. In recent years Parliament has written into some statutes, such as the Clean Air Act, 1956, statutory defences which protect morally innocent people from conviction. It would be a good idea to overhaul some of the existing legislation.

Local Law Society for London ?

AN interesting development with regard to the growth of provincial law societies is the formation of the Central Middlesex Law Society, the first provincial law society in Middlesex. On 28th January about 100 solicitors assembled at an hotel in Wembley to dine, listen to addresses by Sir SYDNEY LITTLEWOOD, the Vice-President, and Sir THOMAS LUND, the Secretary, of The Law Society, and to adopt the necessary rules. It is hoped that the new society will enable local practitioners to keep in touch much more effectively with The Law Society and will give them an organisation which will be able to play an effective and useful part in local public affairs. What is equally interesting is that this new society may inspire the formation of a local law society for London. We wish good progress and success to all officers and members of the Central Middlesex Law Society.

ESTATE DUTY—A CALL FOR REFORM—I

ESTATE duty in its present form was imposed by the Finance Act, 1894, and is payable in the case of all persons dying after 1st August, 1894. It superseded probate duty and account duty and is chargeable, subject to any express exemptions and exceptions, upon all property which passes or which is deemed to pass on the death or at a time ascertainable by reference to the death.

By s. 6 (8) of the Act estate duty on real property becomes due for payment on the expiration of twelve months from the death, or upon the sale of the property before that time. So long as the land remains unsold the duty may, if desired, be paid by eight yearly or sixteen half-yearly instalments, the first of which is due on the anniversary of the death; but if and when the land is sold all the outstanding duty becomes due for payment.

Duty in respect of annuities chargeable under s. 2 (1) (*d*) of the Act is also due on the expiration of twelve months from the death and may, at the option of the person delivering the account, be paid by four equal yearly instalments. On a reversionary interest the duty need not be paid until the interest falls into possession, nor need the duty on timber be paid until the timber is actually sold. There are also special provisions relating to certified works of art.

In the case of personal property generally (including leaseholds) the duty is payable on the delivery of the Inland Revenue affidavit or account, or on the expiration of six months from the death, whichever first happens. The duty thus becomes payable before the grant of probate or letters of administration and, in addition, interest is chargeable from the date of death, whereas in other cases it is chargeable from the date when payment fell due.

Changes since 1894

The distinction as to the time for payment of the duty between personalty and realty was created when the maximum rate of duty was 8 per cent. (against 80 per cent. to-day) and when, it is safe to say, few deceased estates which attracted duty at the highest rate did not comprise a high proportion of realty. But in the sixty-five years which have elapsed since 1894 the economic pattern of life has changed considerably and property generally has lost much of its attraction as an investment. Large estates have been broken up and sold (often to pay duty) or turned over to companies. The most attractive form of property investment—commercial property of high standing—is generally held by insurance companies and London property companies whose expert management and large resources enable them to put such property to the best economic use and, where desirable, to carry out large-scale redevelopment, the cost of which would be wholly prohibitive to the private investor. Blocks of flats and other large residential estates, too, are now generally owned by companies, so that the erstwhile investor in real property has become the investor in personalty through the medium of stocks and shares. Again, the total number of companies registered has trebled since 1926, while at the end of 1956 the nominal capital of limited liability companies—divided between 11,107 public companies and 290,889 private companies—amounted to £6,962m., against an assets value of possibly two or three times as much. This growth is a measure of the task of raising finance for estate duty in advance of probate, to say nothing of the expense involved and the liability in respect of bank overdrafts which falls on executors and administrators personally.

The estate duty problems of private companies are many and difficult, but it can at least be said that they have received some official recognition, inadequate though that may be. Sections 29 to 31 of the Finance Act, 1954, provide some amelioration of the incidence of the strict provisions of s. 55 of the Finance Act, 1940; and where shares or debentures comprising a controlling interest in a private company are sold within three years of the death (otherwise than to relatives) by an arm's length sale at a price freely negotiated, the actual sale price (if it is less) is substituted for the assets valuation, provision being made for adjustment to meet any change of circumstances affecting value between the dates of death and sale. The position of executors of a large estate of quoted stocks and shares attracting duty at the highest rate is unenviable in the extreme but has yet to receive the serious attention of the Legislature, and is brought to the notice of the public only following a financial crisis.

Guarantees to bankers

The executor confronted with the problem of raising money to pay estate duty is usually accommodated by the deceased's bankers, and it may well be, in the majority of cases where only small estates (other than small private companies) are involved, that no particular difficulty arises. In the case of large estates, however, the problem is correspondingly greater, and greater also because of the higher rate of duty, while the risks entailed at a time of falling values may be serious in the extreme. Whereas the value of real property remains relatively stable, falls in stock exchange prices at a time of crisis can be both sudden and disastrously heavy.

There are three ways in which a banker may avail himself of securities as cover for indebtedness: (*a*) by lien, (*b*) by pledge, and (*c*) by mortgage. Lien does not apply to property tendered to him as cover for an advance, as the transaction is one of pledge or mortgage; nor does lien attach to securities deposited by a person for safe custody. The fact that the banker holds securities deposited by the deceased for safe custody, although sufficient in value to cover the charge to estate duty, will therefore not solve the executor's difficulty, although it will help materially to smooth his path.

A pledge is a different matter. The pledgee is entitled to exclusive possession of the property until the debt incurred has been discharged and the pledgee has, in certain circumstances, the power of sale. Unlike property subject to lien, it is not essential that the thing pledged should be actually owned by the pledgor; it is sufficient if he pledges it with the owner's consent.

Executors have power to pledge specific assets of the deceased before probate is obtained, and the act will be valid if probate is granted to them, but if declined difficulty may arise. Administrators, on the other hand, cannot give such a charge before obtaining grant of administration. Accordingly, the practice of bankers is to make advances to executors and administrators on their personal responsibility covered by an undertaking to apply the sum advanced for payment of estate duty and expenses. As part of the undertaking the personal representatives agree to repay the advance out of the first moneys received on account of the estate of the deceased and that, in default of repayment within a reasonable time, the advance shall be treated as a demand loan for which they are jointly and severally responsible. In *Farhall* v. *Farhall; ex parte London and County Banking Co.* (1871), 7 Ch. App. 123,

Mellish, L.J., said: "It appears to me to be settled law that, under a contract of borrowing made by an executor after the death of the testator, the executor is only liable personally and cannot be sued as executor so as to get execution against the assets of the testator."

Fall in security values

It will thus be possible, in the case of large estates consisting wholly or mainly of quoted stocks and shares, for a severe and sudden decline in stock exchange prices between the date of death and the date of sale of the securities to endanger not only the solvency of the estate but also to involve the personal representatives in personal liability to the bank. A reference to the period between 6th July, 1957, and 25th February, 1958, will serve to illustrate this. At the former date the *Financial Times* industrial ordinary index stood at 207·6; by the latter date it had declined to 154·4—a fall of rather more than 25 per cent., and 5 per cent more than the retained portion of deceased estates attracting duty at the 80 per cent. rate. This index figure, however, is based upon the behaviour of a wide and representative list of investments involving a much wider spread than is probably found in most individual investment portfolios.

How some individual securities enjoying a high investment rating fared during this period is shown by the following examples: Legal and General Assurance fell from 138s. 9d. to 102s. 6d.; Unilever from 112s. to 71s. 9d.; Rolls Royce from 119s. 4½d. to 84s.; Courtaulds from 33s. 7½d. to 20s. 9d.; Associated Portland Cement from 49s. 3d. to 29s. 9d.; and Marks and Spencer "A" from 57s. 3d. to 30s. 3d. The worst sufferers were the major oil companies. British Petroleum (in which the British Government have an investment now valued at £304m.) fell from 165s. to 81s. 3d.; Burmah Oil from 114s. 7½d. to 61s. 3d., and Shell Transport and Trading (complicated by a rights issue) from 210s. 7½d. to 121s. 3d.

These heavy falls were brought about by the American trade recession, its impact on world trade, and the measures taken by the British Government to combat inflation at home and protect sterling—causes well beyond the control of the ordinary executor. Moreover the falls occurred at a time when equities, including leading oil shares, had secured a large and growing place in every well balanced investment portfolio as a hedge against inflation. In such circumstances as then obtained executors of a large personal estate attracting a high rate of duty could hardly be blamed for selling on a falling market, even though they foresaw a resumption of the upward trend of security values at some unknown future date. The alternative, if the upward trend were long delayed, might be to court the implementation of their guarantees to the bank.

Expenses

The burden and expense of finding the money to pay estate duty which originated in the large landed estates is found now also (as has been seen) in the estates of deceased holders of shares in public and private companies. Not only is there interest to pay on the amount of duty from the date of death but also heavy interest to pay on the bank overdraft, probate fees, and legal and other charges. Since, also, the forced liquidation of a large holding of shares in a public company would severely depress the market price, and so limit the proceeds of sale, special arrangements for the disposal of the shares have to be made. These arrangements may involve lengthy and expensive negotiations resulting in the sale of the shares at a discount to a financial house which will unload them gradually on to the market and charge a commission for its services. In the case of private companies the expense, relatively, may be even greater.

A large private company which is ripe for a stock exchange quotation may help to solve its owners' death duty problems by making an issue of shares to the public or by placing 25 per cent. of its voting shares with the public so as to secure immunity from surtax directions under s. 245 of the Income Tax Act, 1952. On account of the heavy cost of printing, advertising, underwriting commissions, issuing house fees, and other expenses connected with the issue, this method of providing funds for estate duty is of limited application. A somewhat cheaper method of obtaining a quotation is for the owners of a private company to acquire a "shell" with a stock exchange quotation and for the shell, in turn, to acquire the shares of the private company. But even a "shell" with no assets beyond its stock exchange quotation costs between £8,000 and £12,000.

Estate duty organisations, like Estate Duties Investment Trust, Ltd., Safeguard Industrial Investments, Ltd., and Private Enterprises, Ltd., have been specially created to assist the medium-sized private company, but the amount of business which they transact is understood to be somewhat limited. The standards of the institutional investor are necessarily somewhat strict in the rating of suitable investments, and nowadays young and energetic management is one of the criteria adopted. Sometimes the problem is that of raising the necessary finance without jeopardising control, and this may involve a costly reorganisation or reconstruction scheme to safeguard the interests of the different parties. Sometimes an insurance company or pension fund may be prepared to provide funds on the security of a debenture, but whatever method of raising money is adopted expense is an inevitable ingredient.

Though existing facilities for the public marketing of shares may be adequate to serve the needs of large private companies, and access to funds, on terms, may be obtained by medium-sized private companies through institutional investors of one kind or another, no special provision appears to be made for the owner of the small company who, through misfortune or premature death, has been unable to accumulate funds outside the company. In such a case, and in the absence of insurance cover, there may be no visible alternative to the sale of the business to outside interests.

K. B. E.

[To be concluded]

Mr. G. M. MAHON, Puisne Judge, Tanganyika, has been appointed Chief Justice, Zanzibar.

Mr. ARCHIE PELLOW MARSHALL, Q.C., has been appointed a Commissioner of Assize on the Oxford Circuit (Newport).

Mr. M. P. PUGH, who retired in October last from the post of prosecuting solicitor for the City of Birmingham, has been appointed honorary solicitor to the Industrial Police Association.

Mr. ALAN E. ELLIS, senior Legal and Administrative Officer, has been appointed solicitor to the Crawley Development Corporation, in succession to Mr. P. K. S. Wilkinson, who has entered practice in London.

Mr. BERNARD JOHN BYCROFT EZARD, C.B.E., assistant solicitor, Ministry of Labour and National Service, has been appointed solicitor to the Ministry, in succession to Sir Archibald Harrison, C.B.E., who is retiring in March.

A NEW APPLICATION OF DONOGHUE v. STEVENSON

THE case of *Miller* v. *South of Scotland Electricity Board* [1958] S.L.T. 229 has focused attention on a recent tendency in Scots law which may be of interest to English lawyers. The doctrine of last opportunity, widely current in England and Scotland until it became out of date following the Law Reform (Contributory Negligence) Act, 1945, was disapproved in the decisions in the House of Lords in *The Boy Andrew* [1947] S.C. (H.L.) 76 and *Grant* v. *Sun Shipping Co.* [1948] S.C. (H.L.) 73, but has recrudesced in Scotland in the sheep's clothing of *Donoghue* v. *Stevenson* [1932] S.C. (H.L.) 31. There have been many different applications of *Donoghue* v. *Stevenson* since it was decided, but it is submitted that to adduce the doctrine contained therein in support of the out-of-date theory of last opportunity can lead only to alarm and despondency, while serving to keep alive a theory which should have been solemnly buried years ago.

Miller v. *South of Scotland Electricity Board* was an action for damages raised by the father of a boy who sustained injury in April, 1955, through grasping the bared ends of a live electric cable which he had found in a partially demolished house, owned by the local authority. The house where the accident happened was one of a row of houses from which the tenants had been removed by the local authority and rehoused elsewhere. When the final tenant had gone, in September, 1954, the local authority requested the electricity board to "remove their services," and some three months later the electricity board informed the local authority that the services had been removed. Until December, 1954, the premises were lockfast, but shortly afterwards the local authority began to demolish the houses, and when the pursuer's son entered the partially demolished house he did so by means of the back entry, from which the door had been removed. The armoured cable which caused injury was lying on the floor of the house with some four inches of bare wire, and the cut-outs and sealing chambers had been damaged. The breach of duty averred by the pursuer was that the defenders only removed the meters, withdrew the fuses and sealed the cut-outs but did not neutralise the cable by disconnecting it from the main line, in spite of the fact that they knew or ought to have known that the premises would shortly cease to become lockfast and become an allurement to children. The local authority were not called on as defenders. It was held by the Lord Ordinary that the risk which caused the accident was not one which the defenders ought, as reasonable men, to have foreseen, and he dismissed the action. On appeal, the First Division of the Inner House sustained the Lord Ordinary's judgment. The pursuer then appealed to the House of Lords, which reversed the decision of the First Division and ordered that proof before answer should be allowed.

"Last opportunity" test

Before discussing how *Donoghue* v. *Stevenson* was applied in the case of *Miller*, it may be advisable to take a quick glance at the development of the law of last opportunity and how it has come to be associated with the doctrine of *Donoghue* v. *Stevenson*.

Prior to the 1945 Act the test usually applied by the courts both in England and Scotland in cases where more than one party had been negligent was the test of last opportunity. It was generally applied in cases where the pursuer, as well as the defender, had been negligent and a defence of contributory negligence had been advanced, but there was held to be no logical distinction between its application to that set of circumstances and to circumstances where some party other than the defender or the pursuer had been subsequently negligent. The doctrine was officially given birth to in the case of *Butterfield* v. *Forrester* (1809), 11 East 60, approved in the famous donkey case of *Davies* v. *Mann* (1842), 10 M. & W. 546, in both of which cases persons drove into obstructions placed on the road. Although the person leaving the obstruction there in the first place might have been negligent in so doing, it was held that, if the driver seeing the obstruction failed to exercise a reasonable standard of care, he was liable in that he had the last opportunity to avoid the accident. The negligence of the owner of the obstruction was regarded as not actionable in the sense that it was too remote from the damage caused, and the causal connection had been broken by the negligence of the driver. In the case of *Radley* v. *London and North Western Railway Co.* (1876), 1 App. Cas. 754, the doctrine received a more polished treatment, and the position before the 1945 Act may be summed up in four propositions :—

(i) if a pursuer's negligence was the efficient and final cause of the damage, he could not recover damages ;

(ii) where the acts of negligence succeeded on each other so immediately that the courts could not determine whose negligence had been the final, efficient cause, the courts refused to allow either party to recover damages from the other ;

(iii) where a pursuer had been guilty of negligence but it was only a *causa sine qua non*, not a *causa causans*, he could recover ;

(iv) where the effects of prior negligence crystallised and became apparent after the subsequent act of negligence, then it was treated as subsequent negligence—*British Columbia Electric Railway Co.* v. *Loach* [1916] 1 A.C. 719.

The law, as mentioned above, was essentially the same where a pursuer was attempting to recover from two persons each of whom had been negligent at succeeding points in time : Beven, Negligence, 4th ed. (i), p. 172 : "The conclusion is that contributory negligence is not more than a case of negligence, not dependent on any different rule of law though pre-supposing the limitation of the issue of negligence to an enquiry as to which of two persons, its final compulsion should be imputed." The puzzle, in this theory, was simply to find the effective and final cause of the injury and it was assumed as a corollary that the final cause was the only cause.

Effect of the Law Reform (Contributory Negligence) Act, 1945

The 1945 Act, s. 1, by providing that where there was joint fault the pursuer should not be debarred from recovering damages, has altered the position considerably. The fact that negligence occurred subsequently does not, *ipso facto*, enable a clear line to be drawn between the acts of negligence, thereby relegating the prior to the status of a *causa sine qua non*. Nowadays the doctrine of last opportunity only receives effect where the later negligence is both subsequent and severable, and the courts are not over-enthusiastic to sever later negligence from circumstances caused by a prior act of negligence. Instead of searching for a single effective final cause the courts look for contributory factors of the damage. This is only the culmination of a reaction against the theory of last opportunity

which may be noted in *Burrows* v. *March Gas and Coke Company* (1872), L.R. 7 Ex. 96, where a defective pipe was sold in breach of contract but the subsequent negligent act of a workman in exploring for gas with a lighted candle did not defeat the claim upon the contractors, and especially in the case of *The Volute* [1922] 1 A.C. 129. In the *Volute* case, Lord Birkenhead said, at p. 137, "Contributory negligence certainly arises when the negligence is contemporaneous, but are the only cases of contributory negligence cases where the negligence is contemporaneous? Is it to be the rule that in all cases if the tribunal can find a period at which *A's* negligence has ceased and after which *B's* negligence has begun, that then the negligence of *A* is to be disregarded? If such should be the rule, it will be found that the cases of contributory negligence would be few"; and, at p. 144, "And while no doubt where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the party secondly negligent, while not held free from blame under the *Bywell Castle* rule, might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution."

In *The Boy Andrew* [1947] S.C. (H.L.), at p. 76, Viscount Simon made some valuable remarks about the doctrine of last opportunity: "The principle of *Davies* v. *Mann* has often been explained as amounting to a rule that when both parties are careless, the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable . . . The Law Revision Committee stated that 'In truth there is no such rule—the question, as in all questions of liability for a tortious act, is, not who had the last opportunity of avoiding the mischief, but whose act caused the wrong?'" (Cmd. 6032, June, 1939, p. 16). It might have been thought that the doctrine was finally laid to rest by Lord du Parcq's opinion in *Grant* v. *Sun Shipping Co.* [1948] S.C. (H.L.) 73. At p. 77, Lord Mackay, the Lord Ordinary, had thought that the commission of a subsequent act of negligence had *ipso facto* broken the chain of causation but the House of Lords reversed the decision of the Lord Ordinary, Lord du Parcq saying: "If the negligence or breach of duty of one person is the cause of injury to another, the wrongdoer cannot in all circumstances escape liability by proving that, though he was to blame, yet but for the negligence of a third person the injured man would not have suffered the damage of which he complains. There is abundant authority for the proposition that the mere fact that a subsequent act of negligence has been the immediate cause of disaster does not exonerate the original offender."

Survival of the doctrine of "last opportunity" in Scotland

But there is evidence in Scotland that the doctrine of last opportunity is not dead yet. In *Eccles* v. *Cross and McIlwham* [1938] S.C. 697, where a workman was killed by an electric shock while engaged in the reconstruction of a building, it was held that as the deceased's representative had made averments of a duty to inspect on the part of the owners of the building, he could not relevantly proceed against the contractors, and consequently his action was dismissed. The Lord Ordinary professed to apply the doctrine of last opportunity, holding that since a duty to inspect had been averred, there was a possibility of intermediate inspection and that as *Donoghue* v. *Stevenson* could not apply, the action against the contractors must be dismissed. Proof before answer was allowed *quoad* the owners of the building. The First Division upheld the Lord Ordinary's decision and the following excerpt is taken from Lord President Norman's speech: "By these averments he has, in my opinion, destroyed the proximity between the negligence complained of and the wrong suffered on which his case against the first-named defenders must depend." Lord Moncrieff thought that: "It is, however, I think, equally clear that such a cause of action does not survive the interposition of a second act of negligence on the part of other parties who have had an opportunity and duty of inspecting the work which was rendered defective and dangerous by negligence on the part of the contractors." His lordship believed that the law had been changed by *Heaven* v. *Pender* (1883), 11 Q.B.D. 503, and that consequently he could not hold both defenders concurrently to blame. The reasoning would appear to be as follows: taking the pursuer's averments *pro veritate* the owners of the building were liable, it being averred that they had an opportunity and a duty to inspect, there was therefore the possibility of intermediate inspection and the parties, according to *Donoghue* v. *Stevenson*, were not in a sufficiently proximate situation as to be neighbours, in Lord Atkin's sense of the term. This is really an application of the doctrine of last opportunity but speciously clothed in the garb of *Donoghue* v. *Stevenson*, whose rule regarding proximity would appear to be applied.

It must be stated at once that the authority of *Donoghue* v. *Stevenson* was adduced in error in the case of *Eccles*. *Donoghue* v. *Stevenson* is not authority for any of the following propositions: (i) That an action will not lie because a person has been averred to have had a duty of inspection. That is not the same as "reasonable possibility" of inspection. That a person ought to have inspected is a slender guide to whether a "reasonable possibility" existed. A person may have been under a statutory duty to inspect but, as a matter of common practice, there was no inspection. It is surely the duty of a court to determine the existence of a "reasonable possibility" by proof and not, as in *Eccles*, to equate reasonable possibility and duty to inspect, dismissing the case as irrelevant. (ii) That an action will not lie because a person ought to have inspected and made a negligent inspection (or failed to do so). It is submitted that whether some inspection was in fact carried out is irrelevant because the test set up in *Donoghue* v. *Stevenson* was "reasonable possibility" of inspection, which was declared to be partly a question of time, who might use the goods, the nature of the goods themselves and other factors. That an inspection was negligently carried out may not *per se* render an action irrelevant against the original defenders but simply allows the pursuer to bring in the person charged with the duty as an additional defender. The actual failure to make an inspection is not relevant to the question whether, looking to the circumstances, inspection was reasonably possible. The negligence of the persons charged with the duty of inspection has nothing to do with "reasonable possibility" and therefore with the question whether the original action will lie or not. This second proposition is the doctrine of last opportunity heavily disguised to look like *Donoghue* v. *Stevenson*. (iii) That an action will not lie against the original defenders unless the pursuer can negative negligence on the part of persons charged with intermediate inspection. This surely is the high-water mark of the doctrine of last opportunity in its disguised form. It is contained in the opinion of Lord Sorn, a judge of the First Division, which dismissed the pursuer's case in *Miller* v. *South of Scotland Electricity Board*, to which we must now turn.

Miller's case

It is not suggested that the doctrine of last opportunity was the sole reason which moved the judges of the First Division to dismiss the pursuer's action in *Miller*, but undoubtedly it was one of the contributory factors. Lord Blades, Lord Ordinary, whose judgment was affirmed by the First Division, said: "The defenders were not in control of the partially demolished house; that lay with the local authority. The local authority, as owners of the partially demolished property, had ample opportunity of inspection of what the defenders had done to withdraw their services; if dissatisfied with the manner in which the withdrawal had been carried out—if, for example, they saw cables torn from the sealing boxes and lying on the floor—it was up to the local authority to inform the defenders of these facts." The implication is that the local authority had an opportunity and a duty of inspection and that they could have informed the defenders if they were not satisfied with the results thereof and that therefore the local authority were negligent. Lord Blades immediately went on to say that the pursuer's son was not a neighbour in Lord Atkin's sense and dismissed the action. In the First Division Lord Clyde thought the averments might well have founded an action against the local authority but could not, by virtue of this, possibly found a case against the defenders. Lord Sorn said: "But I think that to make such a case relevant, the averments would have to negative the view that the intervening person had negligently failed to avail himself of the opportunity of preventing the injury so as to dissociate the act or omission of the defenders from the injury." It is necessary to bear in mind that the question at issue was admittedly whether *Donoghue* v. *Stevenson* applied and that these were some of the reasons advanced by their lordships why it did not apply. For a general view of the matter let us turn to Lord Denning's opinion in the House of Lords, which reversed the finding of the First Division. "The courts of Scotland have held that those averments are irrelevant, that is they are insufficient in law to render the defenders liable . . . As I read the judgments they take the view that if anyone is responsible for the injury to this child, it is the town council and not the electricity board. The electricity board left the house in a condition which was safe so long as it was lockfast. Some weeks, even months, later the town council—or contractors employed by them—started to demolish the house and left it open to all and sundry without any notice to the electricity board. If it was anyone's duty to take care to see that no danger existed on the premises during the demolition, it was the duty of the town council; at any rate, the town council had the opportunity of intermediate inspection and their conduct broke the chain of causation." Thus, the First Division thought that the local authority was to blame, as they had in fact an opportunity of inspection, and did not use it, and that their negligence thereby broke the chain of causation. Consequently *Donoghue* v. *Stevenson* did not apply and there was no relation of neighbourship and no duty.

The last of "last opportunity"?

It is to be hoped that the House of Lords in reversing the finding of the First Division has laid to rest the doctrine of final opportunity. Quoting again from Lord Denning: "I am afraid I cannot agree with the approach of the Court of Session either in *Eccles* v. *McIlwham* or in the present case. If the pursuer avers facts from which it may be inferred that the defenders were negligent and that that negligence was one of the causes of the injury then he makes out a *prima facie* case; and his claim is not to be defeated by the fact that subsequently someone else was also negligent and that that person's negligence was also one of the causes of the injury. It is a fallacy to suppose that the last cause is the sole cause. It is often only one of the causes . . . It follows that a pursuer need not negative the existence of other causes. He need not negative the opportunity of inspection by others." In any event, whereas in *Eccles* the pursuer averred a breach of duty on the part of the owners of the building, and was thereby deprived of a remedy against the contractors, in *Miller* the pursuer neither averred a duty nor an opportunity of inspection, but merely because, from his averments, it could be inferred that the local authority had an opportunity, he was held to have no action against the original defenders.

Thus the First Division came to the conclusion that if anyone was to blame it was the local authority, not from any specific averment of fault made by the pursuer but from an inference from his averments as a whole. In this, the Division has gone beyond *Eccles*, but in concluding that negligence necessarily breaks the chain of causal connection laid down by *Donoghue* v. *Stevenson* it is equally wrong. One may venture to hope that the spectre of last opportunity will not re-appear in this or any other form.

H. M.

"THE SOLICITORS' JOURNAL," 19th FEBRUARY, 1859

On the 19th February, 1859, The Solicitors' Journal published the sequel to the appointment of a Master in Lunacy which it had criticised the previous week: "Mr. Higgins has resigned and Mr. Samuel Warren reigns in his stead. The lesson administered has been salutary and it is satisfactory to find that public opinion was too strong to admit of such an abuse of patronage. Our experienced correspondent, whose letter appears in another column, will permit us to say that no private opinion as to the ability or worth of Mr. Higgins, neither of which we wish to dispute, can weigh for a moment in the scale against the public scandal of an untried barrister elevated to a most responsible judicial position because he is a near relative of the Minister who disposes of the place . . . Mr. Higgins, we are sincerely glad to hear, is again installed in his registrarship and the mastership is filled by a man of long standing at the Bar, already exercising judicial functions and well known to possess ability in more ways than one." The letter referred to was from a solicitor of thirty-two years' standing. He wrote: "As to Mr. Higgins, I am one of the few solicitors who could have happened to attend a warrant before him during his one or two days' reign. I never saw him before or since; but I believe he would have turned out one of the best men ever placed in such a situation. If he had been kicking his heels about the courts doing nothing for the last ten years, it would have been reckoned all right. Because he has been doing something elsewhere, it is all wrong."

Mr. Thomas Lister Croft, solicitor, of Wakefield, left £58,471 net.

Mr. Adam Fletcher Greenhalgh, solicitor, of Bolton, left £72,340 net.

NATIONAL INSURANCE ADJUDICATION: SOME STATISTICS

ALTHOUGH by the nature of the subject National Insurance appeals are not a highly remunerative source of work, nevertheless solicitors are increasingly having to familiarise themselves with the appeal machinery involved, especially since the National Insurance (Determination of Claims and Questions) Amendment Regulations, 1958 (S.I. 1958 No. 701) (amending S.I. 1948 No. 1144 made under the National Insurance Act, 1946), added National Insurance local appeal tribunals to the bodies before which solicitors may appear as advocates. Although relevant points of law can be intricate, the fact that generally relatively small sums are involved increases the likelihood that legal representation will tend to be by the solicitor consulted; few solicitors will be prepared to advise their clients to incur the additional costs of counsel for cases to be heard at local tribunal level or even at the final appeal stage before the Commissioner, although when there are to be exceptions in this respect these are likely to be found in respect of oral hearings before the Commissioner or one of his deputies.

Claims for National Insurance benefits must be made in the first instance to an insurance officer. Throughout Great Britain there are some 860 local offices of the Ministry of Pensions and National Insurance. At least one insurance officer (being a full-time Ministry official nominated as such) is located at every such office and further insurance officers are to be found in central offices of the Ministry. Some Ministry of Labour officials are also nominated as insurance officers for the purpose of administering unemployment benefit.

The great bulk of claims are disposed of by the insurance officers who are the first stage of the three-tiered independent statutory authorities which adjudicate upon National Insurance claims. Where new claims a year are numbered in millions (in cases of sickness and unemployment benefit),

TABLE I

NATIONAL INSURANCE ACTS

APPEALS AND REFERENCES DECIDED IN GREAT BRITAIN BY LOCAL TRIBUNALS, 1952–1957*

TYPE OF CLAIM	1952			1953			1954			1955			1956			1957		
	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %
1. Unemployment benefit	35,504	11,924	34	31,562	9,622	30	23,573	6,721	29	18,906	5,373	28	18,911	5,230	28	20,092	5,449	27
2. Sickness benefit ..	16,331	3,388	21	16,448	3,241	20	14,743	2,840	19	13,954	2,721	19	12,431	2,441	23	10,489	1,973	19
3. Maternity benefit ..	1,548	250	16	1,388	233	17	2,049	251	12	2,071	237	11	1,911	226	12	2,171	190	9
4. Widow's benefit ..	1,036	187	18	823	193	23	807	159	20	819	223	27	844	209	25	674	172	26
5. Guardian's allowance	58	6	10	51	6	12	57	5	9	61	11	18	53	15	28	40	12	30
6. Retirement pension ..	1,883	406	22	1,717	381	22	1,907	371	19	1,799	399	22	1,703	372	22	1,691	371	22
7. Death grant	533	98	18	451	58	13	336	36	11	370	47	13	348	34	10	314	34	11
8. Industrial injury benefit	7,165	3,616	50	7,020	3,349	48	7,171	3,355	47	7,069	3,181	45	7,220	3,263	45	6,910	3,078	45
TOTAL	64,058	19,875	31	59,460	17,083	29	50,643	13,738	27	45,049	12,192	27	43,421	11,790	27	42,381	11,279	27

Source: Annual Reports of the Ministry of Pensions and National Insurance.
* Corresponding statistics for the years 1948–51, inclusive, are to be found in an article in the *Industrial Law Review*, January, 1953, vol. 7, p. 176.

TABLE II

NATIONAL INSURANCE ACTS

APPEALS DECIDED IN GREAT BRITAIN BY THE COMMISSIONER, 1952–1957*

TYPE OF CLAIM	1952			1953			1954			1955			1956			1957		
	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %	Total No.	Successful No.	Successful %
1. Unemployment benefit	732	344	47	799	327	41	512	257	50	432	163	38	520	199	38	513	201	39
2. Sickness benefit ..	357	145	41	335	137	41	272	114	42	254	115	45	264	118	45	176	84	48
3. Maternity benefit ..	57	18	32	22	5	23	42	8	19	38	8	21	56	10	18	38	6	16
4. Widows' benefit ..	47	15	32	64	26	41	62	24	39	54	21	39	41	16	39	39	19	49
5. Guardian's allowance	8	0	0	1	0	0	2	0	0	6	1	17	4	3	75	3	1	33
6. Retirement pension ..	106	34	32	105	41	39	88	23	26	94	24	26	77	18	23	50	17	34
7. Death grant	49	21	43	20	7	35	12	3	25	7	2	29	11	3	27	8	0	0
8. Industrial injury benefit	680	254	37	683	230	34	665	247	37	607	216	36	659	243	37	628	246	39
TOTAL	2,036	831	41	2,029	773	38	1,655	676	41	1,492	550	37	1,632	610	37	1,455	574	39

Source: Annual Reports of the Ministry of Pensions and National Insurance.
* Corresponding statistics for the years 1948–51, inclusive, are to be found in an article in the *Industrial Law Review*, January, 1953, vol. 7, p. 176.

appeals to local tribunals are numbered in tens of thousands and to the Commissioner in hundreds, and where new claims amount to hundreds of thousands appeals to tribunals do not exceed thousands. To be more specific, during 1957 new claims for sickness benefit numbered 9·6 million, for unemployment benefit 2·6 million ; 782,000 maternity grants were made, 424,000 new pensions granted and some 1,100 claims for guardians' allowances sanctioned. In 1956 238,000 death grants were paid and for the twelve months ended 31st October, 1956, 42,000 industrial injury benefit awards were made. These large total figures for cases handled must be borne in mind when the statistics of adjudicated claims are considered. These are to be found in Tables I and II above.

Local tribunals

After receiving a claim for benefit an insurance officer may decide it himself or refer it to a local tribunal for a decision.

If the claimant is dissatisfied with the insurance officer's decision he may give written notice of appeal to a local tribunal within twenty-one days of that decision. At the end of 1957 there were 213 tribunals in Great Britain. Every tribunal consists of a paid chairman, usually a lawyer, and two other members (one being a representative of employed persons and the other being a representative of other insured persons or employers) drawn from panels containing some 8,200 names recommended by the 224 local advisory committees throughout the country constituted under s. 42 of the National Insurance Act, 1946. Appointments of chairmen and to the panels are made by the Minister of Pensions and National Insurance.

As a result of recommendations made by the Franks Committee, the National Insurance (Determination of Claims and Questions) Amendment Regulations, 1958, S.I. 1958 No. 701 and the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Amendment Regulations, 1958, S.I. 1958 No. 702 (amending S.I. 1948 No. 1299 made under the National Insurance (Industrial Injuries) Act, 1946) were made and brought into operation on 5th May, 1958. The first gives an absolute right of appeal from a local tribunal to the National Insurance Commissioner, permits legal representation at local tribunals, and the calling and questioning of witnesses directly by the parties and not through the chairman of the local tribunal or the Commissioner, and establishes that hearings shall be in public unless the chairman or Commissioner is of the opinion that intimate personal or financial circumstances may have to be disclosed or that questions of public security are involved. The second gives an unqualified right of legal representation at local tribunals and also provides for the calling and direct questioning of witnesses before local tribunals and the Commissioner ; the general rule has always been for hearings of industrial injuries cases before local tribunals and the Commissioner to be in public (S.I. 1948 No. 1299, regs. 18 (1) and 22 (3)) ; as explained below, legislation is required, and has been drafted, to give an absolute right of appeal to the Industrial Injuries Commissioner from local tribunals.

Claims adjudicated by local tribunals

Statistics of numbers and types of claims, and rates of success, before local tribunals during 1952–57 are set out in Table I. The largest number of appeals to local tribunals throughout those six years was in respect of unemployment benefit claims with such appeals varying in numbers from over 35,500 and a success rate of 34 per cent. in 1952, to something over 18,900 and a success rate of 28 per cent. in 1955 and 1956. The rate of success was never less than 27 per cent. (1957) throughout the period. This rate of success is second only to cases concerned with industrial injury benefits where the percentage is never less than 45 (1955, 1956 and 1957 with over 7,000, 7,200 and 6,900 claims respectively) and was as high as 50 per cent. in 1952 with over 7,100 cases. It is significant that these are the two types of claim most likely to be argued for appellants by trade union officials well versed in the subject-matter and procedure at a time when legal representation was not permitted.

Next in numerical importance are sickness benefit appeals which declined from some 16,300 in 1952 to less than 10,500 in 1957. The maximum rate of success is found in 1956 (23 per cent.) and the least (19 per cent.) in 1954, 1955 and 1957.

Numbers of appeals in regard to claims for maternity benefit, widow's benefit, guardian's allowance, retirement pension and death grant are too small to render comparisons of much value. It is interesting to note though that rates of success in regard to retirement pension appeals have been constant at 22 per cent. except in 1954 when the rate was 19. Numbers of such appeals have varied from less than 1,900 in 1952 to a few under 1,700 in 1957.

Of all claims taken together, 31 per cent. were successful in 1952, 29 per cent. in 1953 and 27 per cent. in the remaining four years.

The Commissioner

A final appeal lies as of right from a local tribunal to the National Insurance Commissioner. He also acts as the Industrial Injuries Commissioner but until the enactment of the Family Allowances and National Insurance Bill, to which further reference is made in the last paragraph of this article, leave to appeal must still be obtained from the local tribunal or the Commissioner to appeal to him in that capacity. The Commissioner, and his six deputies, are appointed by the Crown and must be barristers or advocates of not less than ten years' standing. Written notice of appeal to the Commissioner must be given within three months of the local tribunal's decision at a local office of the Ministry or, in the case of an appeal by an insurance officer, to the claimant. If the Commissioner considers that any appeal which is made to him involves a question of law of special difficulty, he may direct that the appeal shall be dealt with by a tribunal of three Commissioners whose majority decision is final. The Commissioner decides whether any appeal shall have an oral hearing and legal representation at any such hearing is—and always has been—permitted. Out of the total number of 1,455 appeals to the Commissioner in 1957 there were only 276 oral hearings, of which eight were before a tribunal of Commissioners.

Appeals decided by the Commissioner

The figures relating to appeals decided by the Commissioner during 1952–57 inclusive are shown in Table II. The two leading groups of appeals throughout those years concerned unemployment benefit and industrial injury benefit. Of the former the maximum number was in 1953 with 799 appeals, of which 41 per cent. were successful, and the minimum number 432 in 1955 with a 38 per cent. success rate. The maximum and minimum numbers of industrial injury benefit appeals fell in the same years, with 683 appeals and a 34 per cent. success rate in 1953 and 607 appeals and a 36 per cent. success rate in 1955.

The next most numerous group concerns sickness benefit cases varying from 357 in 1952, of which 41 per cent. succeeded, to 176 in 1957, of which 48 per cent. were decided in the appellant's favour.

Of the remaining groups the most numerous appeals concerned retirement pensions with a maximum rate of success of 39 per cent. in 1953 and a minimum rate of 23 per cent in 1956.

Of total appeals 41 per cent. succeeded in 1952 and 1954, 39 per cent. in 1957, 38 per cent. in 1953 and 37 per cent. in 1955 and 1956.

Comparisons between tribunal and Commissioner's appeal statistics

Unemployment benefit appeals formed the largest numerical group before both tribunals and the Commissioner. Although the next largest group before tribunals concerned sickness benefit cases, with broadly double the numbers of industrial injury benefit claims, the position is reversed at Commissioner level with more than twice as many industrial injury appeals compared with those concerning sickness benefit in every year except 1952, when that proportion was not quite reached. This again illustrates the influence of specialised trade union representation for claimants; now that legal professional representation is generally permitted it will be interesting to see any change in the trends of numbers and rates of success.

The highest overall success rates were in respect of industrial injury benefit cases before local tribunals followed by unemployment benefit cases before the Commissioner.

Except in industrial injury benefit appeals, as a rule rates of success before the Commissioner were greater than before local tribunals. This trend is particularly noticeable in sickness benefit cases with rates of success varying from 19 per cent. to 23 per cent. throughout the period before local tribunals compared with a spread of from 41 per cent. to 48 per cent. before the Commissioner. Of all cases, rates of success increased from between 27 and 31 per cent. before tribunals to a spread of between 37 and 41 per cent. before the Commissioner. A practitioner preparing an appeal for hearing by the Commissioner may thus be encouraged by his greater chance of success than in respect of an appeal to a local tribunal. This variation, however, should not cause too much optimism. Many of the cases brought to tribunals are hopeless from the outset with no point of law effectively arguable. Again, in many cases an appellant there will conduct his case in person and may not have devoted much time in its preparation; he will tend to spend more time on his case about to be heard by the Commissioner and outside assistance may be obtained to present it in the best way possible.

Other appellate bodies

To avoid misunderstanding it should be explained that authorities other than local tribunals and the Commissioner are charged with making final decisions on certain specified questions.

Questions relating to satisfaction of contribution conditions, to the class of insured persons in which a person is to be included and to which of two persons satisfying the conditions for an increase of benefit is entitled thereto (where not more than one of them may have it), involves a formal decision by the Minister of Pensions and National Insurance subject to appeal to the High Court on points of law. Appeals from decisions of medical boards in connection with assessment of disability for purposes of the Industrial Injury Acts lie to medical appeal tribunals. The Family Allowances and National Insurance Bill, given its third reading in the Commons on 23rd January, provides for a right of appeal on law from medical appeal tribunals to the Industrial Injuries Commissioner, and for appeals to him as of right from local tribunals. Its enactment will, after the making of the necessary regulations, also transfer adjudication of claims for family allowances from the Minister, subject to a right of appeal to a referee, to insurance officers from whom appeal will lie to the local tribunals and Commissioner.

N. D. V.

Landlord and Tenant Notebook

AGRICULTURE: CONTROL OF NOTICES TO QUIT

MOST of the Agricultural Land Tribunals and Notices to Quit Order, 1959, the publication and nature of which were referred to in our "Current Topics" on 30th January (p. 80, *ante*), consists of the Rules of Procedure for Agricultural Land Tribunals, which are, in accordance with art. 5, set out in a schedule. But the provisions relating to notices to quit given by landlords are, perhaps, of greater practical importance, and it is to these provisions, contained in arts. 6 to 10, that I propose to devote this article.

"If the landlord of an agricultural holding wishes to give his tenant notice to quit, he should get some good advice on the matter, because there are now many legal requirements which he has to fulfil before his notice will be good," runs the opening sentence of Denning, L.J.'s judgment in *Budge* v. *Hicks* [1951] 2 K.B. 335 (C.A.). It is perhaps beside the point that on both the issues raised in that case the Court of Appeal disagreed with the conclusions reached by the county court judge; which suggests that there is good advice and better advice. But the statement is based on the fact that there are some landlords' notices to quit which can, and others which cannot, be challenged and conditionally annulled by tenants' counter-notices; and that the unchallengeable ones in s. 24 (2) of the Agricultural Holdings, Act, 1948, must always state one or more of a number of specified reasons; and that among those reasons, some can but others cannot be challenged by arbitration.

The new Act

The provisions for challenging reasons were contained in the Agricultural Holdings Act, 1948, s. 26, which has been repealed and replaced (as from 26th January, 1959) by provisions set out in the Agriculture Act, 1958, Sched. I, para. 10. The old subsection began "The Minister may make regulations," the new one begins "The Lord Chancellor may provide by order." The matters for which the Minister might make regulations under the old section were set out in five paragraphs; of (*b*), which was concerned with applications for Ministerial consent to notices to quit (s. 24 (1)) the new section contains no counterpart. The new (*a*) repeats the old (*a*): for requiring any question arising under s. 24 (2)

to be determined by arbitration, for limiting the time within which such arbitration may be required, etc., for extending the period within which a counter-notice may be given where such arbitration is required; the new (*b*) repeats the old (*c*), authorising an order suspending notices to quit till the termination of the arbitration. The new (*c*) reproduces the old (*d*): postponing the date at which a tenancy is to be determined by notice to quit which has effect in consequence of an arbitration. The old (*e*), which dealt with the exclusion of sub-tenancies from the application of s. 24 (1) and the making of such provision as appeared to the Minister to be expedient for safeguarding sub-tenants' interests, including provision enabling the Minister or the Agricultural Land Tribunal to secure that where the interest of a tenant was terminated by notice to quit the sub-tenant should hold from the landlord, has been repeated by the new (*d*) in modified form; it is, of course, the Lord Chancellor who is to consider expediency, and the Minister (in practice the county agricultural executive committee, to which his powers were delegated) is no longer mentioned in connection with the elimination of a mesne tenant.

The new Order

Article 6 of the new Order reproduces, in different terms, regs. 4 and 5 of the Agriculture (Control of Notices to Quit) Regulations, 1948 (revoked by its art. 2). A tenant farmer served with a *prima facie* unchallengeable s. 24 (2) notice to quit may challenge it by arbitration if the reason alleged is one specified in s. 24 (2) (*b*), (*d*) or (*e*). The old reg. 5 set out the effect of those three paragraphs, though not in the order of appearance; the new Order is content to indicate them by reference (so that a tenant farmer may have to buy a copy of the Act in order to understand properly what the notice is about). The reasons are, briefly, that the land is required for non-agricultural use, town planning permission having been granted; that the tenant has failed to comply with a two months' notice to pay rent in arrear, or to remedy within a reasonable time a remediable breach of a term of his agreement not inconsistent with good husbandry; and material prejudice to the reversion by committing an irremediable breach of such a term. And the tenant must, as before, act within a month.

Article 7 extends, as did the old reg. 6, the time within which a counter-notice may eventually be served under s. 24 (1) till one month after the termination of an arbitration required by the tenant, and art. 8 suspends the operation of the notice to quit as did reg. 7; while, in the event of the landlord succeeding, or of consent being given to a s. 24 (1) challenged notice, the Agricultural Land Tribunal (formerly "the arbitrator or the Agricultural Land Tribunal") may, if this makes the notice effective at a date six months before its expiry, postpone its operation by not more than twelve months. The tribunal may, as the arbitrator or tribunal might before, do this *proprio motu*; or on the application of the tenant; but the tenant now has to apply within fourteen days of the termination. The old reg. 8, replaced by art. 9, gave him a month; it also required, which the new article does not, that the application be in writing.

Permissive

It is worth noting that the new provision for arbitration is, like the old one, permissive. The Lord Chancellor has not been influenced by the observations of Somervell and Denning, L.JJ., in *Budge* v. *Hicks*, *supra*: "If as seems to be likely, it was intended, and perhaps the majority of people concerned desire, that matters of this kind should be settled by arbitration, those who are concerned with the making of these regulations, and their possible amendment from time to time, might well consider whether it would be desirable, if that is their intention, to use words which would prevent the argument from being raised in later cases"; and "The Minister could have made regulations to ensure a speedy determination of the matter. He could have required the question to be determined by arbitration, but unfortunately he did not do so." For the argument in question was whether a tenant served with a notice alleging (or, in that case, intended to allege) irremediable damage, etc., could sit back and raise the question when the notice expired; it was held that he could, the old s. 26 (1) saying "The Minister may" and the old regulations that it should be "open to the tenant . . . to serve on the landlord a notice . . . requiring any question arising out of the reason stated in the notice to quit to be determined by arbitration."

The new section says: "The Lord Chancellor may" and the Order: "Where . . . the tenant wishes to contest a reason stated," so the tenant can still resort to defence in depth. But the "wishes to contest" is, possibly, an improvement; and the Lord Chancellor may well have considered that some questions arising out of a reason may involve issues in law which should be decided by the Queen's courts rather than by arbitrators.

What practitioners may well regret is that the remedy is still available to tenants only. The effect of *Budge* v. *Hicks* is that a landlord may—unless, perhaps, he sues for a declaration—be kept in suspense for a considerable period, not knowing whether the tenant will quit or will refuse to quit contending that the breach was remedied or the reversion not prejudiced, that the term was inconsistent with good husbandry, etc.

Article 10 of the new Order deals with sub-tenants, and I propose to deal with their position, both under the Order and generally, in a later article.

R. B.

BOOKS RECEIVED

Gibson's Conveyancing. Eighteenth Edition. By R. H. KERSLEY, M.A., LL.M. (Cantab.), Solicitor. pp. cxxvii and (with Index) 845. 1959. London: The Law Notes Lending Library, Ltd. £4 net.

Gilbart Lectures on Banking, 1959. A Series of four Lectures on the Legal Aspects of Goods as Banking Security. By MAURICE MEGRAH. pp. 44. 1959. London: The Institute of Bankers. 4s. net.

Green's Death Duties. Supplement to Fourth Edition. By D. G. LAWDAY, LL.B. (Lond.), of the Estate Duty Office, and E. J. MANN, LL.B. (Lond.), of the Estate Duty Office. pp. ix and 45. 1958. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Hill and Redman's Law of Landlord and Tenant. Third (Cumulative) Supplement to the Twelfth Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law, and Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. pp. xxiv and 207. 1959. London: Butterworth & Co. (Publishers), Ltd. £1 2s. 6d. net.

International Arbitration Law and Practice. By J. L. SIMPSON, C.M.G., T.D., D.Litt., of the Middle Temple, Barrister-at-Law, and HAZEL FOX, M.A. (Oxon), of Lincoln's Inn, Barrister-at-Law. pp. xx and (with Index) 330. 1959. London: Stevens & Sons, Ltd. £2 2s. net.

HERE AND THERE

THE WRITERS

ONCE, when somebody told Hilaire Belloc a supposedly funny story, he replied ferociously: "It's not malicious. It's not blasphemous. It's not obscene. I don't see what there is funny in it." Doubtless it is that nasty little touch of malice in most of us that laughs immoderately when some person of portentous dignity sits down suddenly on his bowler hat or flings himself decisively on to a collapsible chair, although the more high-minded may care to justify an exuberant enthusiasm at such a scene by the recollection that we have it on the highest authority that it is a Good Thing to put down the mighty from their seat. There is the same reaction of satisfaction when an individual of overwhelming intellectual distinction makes a rather obvious slip. It was therefore with pleasure, rather than horror, that we noticed in *The Observer* a fortnight ago a reference to Writers to the Signet with a parenthetical explanation that they were "Scottish barristers." That was unobservant indeed, but, when the slip was pointed out, the London office bravely assumed the white sheet of responsibility and exonerated its Edinburgh correspondent. The reader who wrote the *mise au point* said that, of course, they are solicitors and that in early times they were clerks in the office of the King's secretary engaged in preparing documents which were authenticated by the royal signet. So Englishmen can now dismiss from their imaginations the fanciful vision of some insane legal ritual in the North in which lawyers become entrapped in an interminable and one-sided correspondence with a mystic or mythical piece of jewellery, a sort of procedural Quest for the Grail. The Writers to the Signet are not the only solicitors in Scotland, but they are the aristocrats of their branch of the profession, who have always lived on an unchallenged equality with their brethren of the Bar, the Faculty of Advocates. Then there are solicitors, enrolled law agents, members of the Society of Procurators and in Aberdeen (to confuse the terminology with a little local colour) members of the Society of Advocates. It makes legal life in England seem rather drab and standardised. Once we, too, had variety in our attorneys and our proctors. The Writers to the Signet have the Signet Library, one of the great libraries of Edinburgh, matching the Advocates' Library. It is devoted mainly to law, but has branched so luxuriantly into so many directions that an intensive pruning is being undertaken by Sotheby's at the end of this month.

GLOSSARY FOR SOUTHERNERS

SINCE, apparently, the identity of the Writers to the Signet is not common knowledge in England, allow me to take you rather diffidently on a conducted tour of Scottish legal terminology so far as a mere Englishman can imagine he knows it. For solicitors it may be useful if they unexpectedly find themselves acting as London agents in a Scottish appeal to the House of Lords. Sometimes even English barristers find their way into a Scottish appeal. Advocates are what we call barristers. Their professional organisation is the Faculty of Advocates. The Dean of the Faculty is not their chaplain but their professional head. He is a good deal more than the Chairman of the Bar Council here and more nearly approaches the bâtonnier of the French. He upholds the rights of the Bar in the face of the Bench and it has been known for a Dean, on hearing that some beginner was being bullied by the judges, to sail in with full majesty and authority and protect him. The Lord Advocate is the equivalent of the Attorney-General. "Silks" are a far more recent invention in Scotland than in England. They are usually referred to as "seniors." Before there were "silks," a busy advocate attained senior status by giving notice that he was "giving up writing." The Scottish superior courts sit in the Parliament House. After all, ours sat in our Parliament House until the Law Courts were built. The old Parliament chamber is used as a sort of Central Hall, only far more gregariously. The courts are divided into the Outer House, the Inner House and the High Court of Justiciary. The Outer House is the court of first instance for most cases and is manned by the Lords Ordinary. The Inner House sits ordinarily in two Divisions, the First Division presided over by the Lord President and the Second Division presided over by the Lord Justice-Clerk. The two presidencies are substantive appointments, but the Outer House judges work their way into the Inner House simply by seniority. The High Court of Justiciary is Scotland's highest criminal court and the Lord President presides there as Lord Justice General. The Scottish law reports are the Session Cases. It irritates the Scottish Law Lords very much to hear English counsel citing them as "Sessions Cases." Scottish pleadings are quite different from English, consisting of a series of assertions by the pursuer (plaintiff) and replies by the defender (defendant). These are called the condescendences. (Do not call them "condescensions.") A Scottish court does not deliver judgment; it pronounces an interlocutor. The English tend to make merry over Scottish legal terminology, but the laughter is echoed beyond the Border. Over there the Woolsack and the Rolls, certiorari and mandamus sound just as funny.

RICHARD ROE.

CENTRAL MIDDLESEX LAW SOCIETY

On 28th January, the Central Middlesex Law Society was formed and rules were adopted. The first officers of the new Society are: President, Mr. R. C. Garrod, of South Harrow; Vice-Presidents, Mr. J. A. S. Nicholls, of Wembley, and Mr. R. C. Politeyan, of Ealing; Hon. Secretary, Mr. W. Gillham, of Willesden, and Treasurer, Mr. J. Phillips, of South Harrow. [A Current Topic on the formation of this society appears at p. 140, *ante*.]

The UNITED LAW DEBATING SOCIETY announce the following meetings to be held during March, 1959, in Gray's Inn Common Room at 7.15 p.m.:—Monday, 2nd March—Debate: "This House would use any means to destroy the Communist system"; Monday, 9th March, at 7.30 p.m.—Moot: Before the Hon. Mr. Justice McNair sitting as the House of Lords; Monday, 16th March—Debate: The motions for the debate and the names of the speakers will be drawn from a hat at the meeting; and Monday, 23rd March—Visit of Mr. Jeremy Thorpe, an I.T.V. personality. Debate: "This House welcomes the prospect of a third channel for television."

The annual dinner of the ROYAL INSTITUTION OF CHARTERED SURVEYORS will be held at Grosvenor House, Park Lane, London, W.1, on Tuesday, 3rd March, 1959, at 7 o'clock for 7.30 p.m. The principal guest will be the Rt. Hon. The Viscount Kilmuir, G.C.V.O., the Lord Chancellor.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Young Delinquents and the Law

Sir,—Mr. Joyce's article in your Journal of the 6th February is informative and enlightening, and coming from one with considerable experience and understanding, it deserves wide publicity amongst justices of the peace.

It is my experience that justices realise fully the heavy responsibility placed on them. Especially do I believe this to be so in the case of justices appointed to juvenile court panels, and I believe that the majority exercise great care in their difficult and exacting task. They are, I am sure, only too conscious of the fact that in many cases the juvenile's whole future is in their hands. Benches are expected to exercise considerable care to ensure that justices fitted for the task are appointed to the panels. In difficult cases justices will undoubtedly always avail themselves of the invaluable assistance to be had from inquiries and reports by highly trained probation officers and others before deciding how to deal with a juvenile, and will in appropriate cases adjourn for further inquiry and report rather than arrive at too hasty a decision. All of this takes up very much time, willingly given by the justices who in these days are invariably otherwise well occupied, and whose great public service is not perhaps always fully appreciated by those not familiar with magistrates' courts.

ALFRED E. JONES,
Clerk to the Justices.

The Petty Sessional Division
of Freshwell and South Hinckford,
Braintree,
Essex.

The Solicitor's Income

Sir,—The letter from Mr. Batten in your issue of 6th February shows that he was content with £150 per annum forty-five years ago. Fifty-five years ago I was content with £52 per annum with gradual increases, as my experience qualified. Increases of wages and salaries as now demanded will put off the day when the National Debt is redeemed or reduced to the disadvantage of all concerned.

A. E. HAMLIN.

Sheringham,
Norfolk.

Sir,—Mr. M. C. Batten invites the views of other experienced solicitors on the propositions contained in his letter which was published in your Journal on the 6th February, 1959. I do not think that Mr. Batten would consider me—a solicitor of six years standing—sufficiently experienced to expose the many fallacies contained in that letter.

However, I cannot let it pass without commenting on the following statement "An unqualified clerk must produce twice his salary to justify his position and a qualified clerk must produce two and a quarter times his salary."

I agree that the more costs a clerk, whether qualified or not, produces the greater his salary should be, even though the admitted man with his academic qualifications tends to be given the less straightforward work.

If an unqualified clerk produces £3,000 costs by all means pay him £1,500 and if a qualified man produces £1,500 then pay him £750. But if they are both producing £2,250 how can you justify paying the unqualified clerk £1,125 and the qualified clerk £1,000.

You might as well say "A blue eyed clerk must produce 11 per cent. more costs than a brown eyed clerk."

A. P. KNAPMAN.

Crediton,
Devon.

Sir,—In response to Mr. Batten's letter in your issue of the 6th February, we write as *A* and *B*, two young solicitors who have been in partnership together for some two years. The following is the tale of our experience.

Five years ago as newly qualified men after ten joint years of unpaid articled clerkship (also being country cousins) we both took "two seats" at provincial offices at £600 per annum. This figure eventually increased over the period of two years as assistant solicitors to £700 in one case and £800 in the other. We commenced in partnership together two years ago and we reply to Mr. Batten's points as he numbered them :—

(*a*) (i) During our two years as assistant solicitors *A* saved £100 and *B* increased his overdraft by that figure.

(ii) This is really an incredible proposition but the risk is being contemplated by one and accepted by the other this year. Properly to carry out his professional activities every solicitor should have a car. Your young married solicitor out of his £850 per annum plus anything his wife might earn must run his car, probably repay on a mortgage of at least £2,000, the sum of approximately £150 per annum, pay his usual household expenses and hope to have some social life also.

(*b*) After about two years in private practice :—

(i) We have, with one secretary, already grossed £6,000 between us in one year.

(ii) We hope this will not be our experience.

(iii) This sounds preposterous. To employ a staff of this size on the gross profit contemplated by Mr. Batten seems to us quite uneconomic.

(iv) With the excessive staff set out in (iii) above, this does not surprise us.

(*c*) Agreed.

(*d*) Agreed.

"A AND B"

North Midlands.

Sir,—I have been reading with interest the recent correspondence on the above subject, in particular the letter from "Another Young Solicitor" in the edition of the 30th ultimo. I think that I can still call myself a young solicitor, but I have been very fortunate and am a partner in my firm and have no personal grumbles. However, my partner and I are anxious to obtain a qualified assistant for our practice and have advertised in the *Law Society's Gazette* for several months in the hope of obtaining someone. My partner is seventy-two and there are quite good prospects of partnership for anyone joining us now.

In view of what "Another Young Solicitor" says, I would have imagined that, if his experience had been general, many assistant solicitors would be dissatisfied with their present employment and would have been looking elsewhere for more remunerative employment. Either they are all perfectly happy in their present jobs or they are too lethargic to do anything to obtain better ones, as we have received only three replies to our advertisement and only one of those could be considered at all suitable, the others not having the perfectly ordinary qualifications for which we ask. We have also written each month, for the last three months at least, to all the advertisers in Register D.1 in the *Law Society's Gazette* who appear to seek employment similar to our vacancy, but hardly any of them have even had the courtesy to acknowledge our letters.

We do not mention the salary which we are offering in our advertisement, partly because it appears to be the custom not to do so and partly because we feel that we cannot make an offer for the goods until we have inspected them and that it would be unfair to both sides to do so.

In fact we are quite prepared to pay more than the £600–£700 mentioned in your previous correspondent's letter and I am only sorry that we were not looking for an assistant when he was seeking a job.

Incidentally, "Another Young Solicitor" says that at the age of twenty-eight he has a salary of £850 per annum and has saved very little. I, having had five and a half years in the Royal Air Force during the war, did not qualify until I was twenty-eight and started my professional career at that age at a salary considerably less than his.

"KENT SOLICITOR."

Points in Practice

CHANGE OF CHILD'S NAME

Sir,—We have seen the question raised under this heading in a recent issue (p. 117) as to the method whereby the surname of an illegitimate child can be changed to the present surname of the mother where she has subsequently married someone other, we assume, than the father of the child.

The question and your answer dealt with the possibility of this being done by deed poll. We wonder if your subscribers and their clients have considered the possibility of the mother and husband jointly adopting the child under the provisions of the Adoption Act, 1958. This procedure is inexpensive, simple and straightforward and has the added advantage, if such be the wishes of the parties, of making the child both for legal and practical purposes a member of the family and will, of course, at the same time legally provide for the change in surname.

We have ourselves been concerned in several such applications over the past few years.

L. A. WALLEN & JENKINS.

Abertillery, Mon.

RETIREMENT FROM TRUST—VESTING OF MORTGAGES IN REMAINING TRUSTEES

Sir,—I notice that on p. 96, *ante*, of THE SOLICITORS' JOURNAL, in the reply to the question dealing with the vesting of mortgages on the retirement of a trustee, you state that in your opinion the mortgages are vested in the continuing trustees, and nothing further remains to be done, and you refer to s. 40 (2) of the Trustee Act, 1925.

Under subs. (4) (*a*) of the Trustee Act, s. 40, it is stated that the section does not extend to land conveyed by way of mortgage for securing money subject to the trust. I think, therefore, that a mortgage must be transferred to the continuing trustees, as otherwise the mortgage will remain vested in the retiring trustee and the continuing trustees.

H. C. E. JOHNSON.

London, W.C.2.

[*We are grateful to several other readers who have written to us on the same point. Our contributor writes :*

I am sorry that in my answer to this problem I omitted to refer to the provisions of the Trustee Act, 1925, s. 40 (4) (*a*). As a result of those provisions the effect of the vesting declaration will be, in the words of Parker, J., in *Webb* v. *Crosse* [1912] 1 Ch. 323, at p. 327 :

"... to vest the moneys secured by the mortgage and the right to receive the same in the [continuing trustees] but to leave the legal estate still vested in the [old trustees]."

Accordingly if and when the mortgages are repaid the continuing trustees will be entitled to receive the mortgage moneys and if they give a receipt endorsed on the mortgage deed and expressly providing that that receipt is not intended to operate as an assignment of the benefit of the mortgage the result, by the Law of Property Act, 1925, s. 115, will be that the mortgage will be discharged and all will be well.

The difficulties caused by the Trustee Act, 1925, s. 40 (4) (*a*), will, however, arise if and when the continuing trustees should have occasion to enforce the security : it will then be necessary to get in the mortgage term. That being so, I agree that it might be as well to get it in now by an express assignment from *B*, *C* and *D* to *C* and *D*.]

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Will—ADMINISTRATION—BEQUEST OF COTTAGE—LIABILITY TO REPAY OVERPAID RENT

Q. By his will, *A* bequeathed his leasehold cottage to *B* and after various other devises and bequests the testator bequeathed his residuary estate to *C*. The testator died in March, 1957. On the death of the testator it was discovered that the tenant of the leasehold cottage, which was restricted, had made overpayment of rent. The question is whether this overpayment should be repaid by the personal representatives of the testator, which in effect means that it will be payable by the residuary beneficiary, or whether it can be deducted by the tenant from the present landlord, who is, of course, *B*. There appears to be no direct authority on this particular point, but in the case of *Bradley-Hole* v. *Cusen* [1953] 1 Q.B. 300 it was held that the tenant could recover the rent from the trustee in bankruptcy of the landlord, and in the case of *Dean* v. *Wiesengrund* [1955] 2 Q.B. 120 it is pointed out in several places that overpaid rent is recoverable from the landlord or his legal personal representative. On the other hand, the expression "landlord" includes any person from time to time deriving title under the original landlord. If, however, the Legislature intended that overpaid rent should be recoverable from the landlord for the time being, what purpose was there in adding the words "or his legal personal representative" in the case of a landlord, which words are omitted in the case of the tenant ?

A. The following statement from Rent and Mortgage Interest Restrictions (*Law Notes*), 23rd ed., p. 143, applies : "If there has been a change of landlord, otherwise than by bankruptcy, while the tenant can sue the former landlord or his executor or administrator for the amount, it is not clear that he could deduct from his rent as against the existing landlord overpayments made to the former landlord. It was decided in the Irish case of *Murray* v. *Webb* (1925), 59 Ir. L.T.R. 41, that he could not, but the point was left open in *Bradley-Hole* v. *Cusen* [1953] 1 Q.B. 300." Having regard to the uncertain state of the law mentioned in this quotation, it would appear that the overpayments must be repaid by *A's* personal representatives out of his residuary estate. This is in accordance with the general principle that debts and other liabilities are paid out of a deceased's general estate in the absence of any special provision, in his will or otherwise, which makes them a charge on any specific part o his estate.

Trustee Borrowing Part of Trust Property on Mortgage

Q. We have been asked to advise whether statutory powers under the Trustee Act, 1925, of advancing money on mortgage would empower [trustees] to make an advance to one of themselves on first mortgage of freehold property (subject, of course, to a proper valuation in accordance with s. 8 of the Act). We have been unable to find any direct authority covering the point. Our own inclination is to advise against it on the basis of the general principle that the trustee must not place himself in a position where his interest as trustee may conflict with his interests as a private individual. If you can refer us to any direct authority on the point we shall much appreciate it. In the present case it is not possible to obtain the consents of all the beneficiaries, as one of them is an infant.

A. We cannot refer you to any direct authority on this point because we have never before heard it suggested that one of a number of trustees could properly borrow part of the trust property from himself and his fellow trustees. We are bound to say that we can think of no more improper conduct, and no conduct more likely to put the trustee in a position where his interests and duties conflict. Let it be supposed that in a few months' time the financial position of the borrowing trustee deteriorates. In those circumstances, it would be the clear duty of the trustees either to sue him upon his personal covenant or to exercise the power of sale in the mortgage, or to foreclose him. Trustees cannot act by a majority, but only unanimously. The result would be that the borrowing trustee would, as a trustee, have to decide whether to foreclose himself. We cannot think that that position can be allowed to arise.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

RATING: RELIEF: ADVANCEMENT OF SOCIAL WELFARE: NURSING COUNCIL

General Nursing Council for England and Wales *v.* St. Marylebone Borough Council

Lord Morton of Henryton, Lord Tucker, Lord Cohen, Lord Keith of Avonholm and Lord Somervell of Harrow

28th January, 1959

Appeal from the Court of Appeal ([1958] Ch. 421; 101 SOL. J. 973).

The General Nursing Council for England and Wales was required by the Nurses Act, 1957, to maintain a register of nurses established in pursuance of the Nurses Registration Act, 1919. The council took out a summons against the St. Marylebone Borough Council (the relevant rating authority) to determine whether on the true construction of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, they formed an organisation within the scope of that subsection (being an organisation not conducted for profit and "whose objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare"), and were, therefore, entitled to the rating relief afforded by subs. (2) in respect of a hereditament at Nos. 23 to 25 Portland Place, occupied by the council for the purposes of its statutory functions under the Nurses Act, 1957. Danckwerts, J., declared that the organisation, having been established to ensure that the general public should receive the services of competent nurses, was for the benefit of the public and, therefore, for a purpose of social welfare within the meaning of s. 8 (1) (*a*) of the Act. The rating authority appealed successfully to the Court of Appeal and the nursing council appealed to the House of Lords.

LORD MORTON OF HENRYTON said that the council contended that its main objects were charitable or alternatively were "otherwise concerned with the advancement of social welfare." It was necessary to decide: (1) What were the council's "main objects" within the meaning of s. 8 (1) (*a*) of the 1955 Act? (2) Were these main objects charitable? (3) If not, were they objects "otherwise concerned with the advancement of . . . social welfare"? It was possible that the council had only one main object but if it had more than one it would not be an organisation within s. 8 (1) (*a*) unless all its main objects were within the subsection. To answer the questions it was necessary to consider the Nurses Act, 1957, ss. 1, 2, 3 (1), 4, 5, 6, 7, 11, 23, 27 and 30. Lord Evershed, M.R., summed up the provisions of the Act, [1958] Ch., at p. 429, saying "that the purposes and functions of the council were and are to maintain a register of nurses, together with a roll of assistant nurses; to regulate accordingly the conditions of admission to and removal from the register and the roll and, in connection therewith, to exercise supervisory and directing powers in regard to training and examinations; and to exercise such other powers and duties as are ancillary to and consequent upon the foregoing. The income of the council appears to be in part derived from fees which the council are authorised to charge upon applications for examination and registration on enrolment and the like, and as to the rest from moneys directly or indirectly provided by Parliament." The appellant council, formed as it was to exercise statutory powers and discharge statutory duties, had only one object—to regulate the profession of nursing in the manner and to the extent set out in the 1957 Act. *General Medical Council* v. *Inland Revenue Commissioners* (1928), 97 L.J.K.B. 578, was rightly decided and the object just stated was not "charitable," giving the word its meaning in law, as established in many cases. In *General Nursing Council for Scotland* v. *Inland Revenue Commissioners* (1929), 14 Tax Cas. 645, the court was right in holding that the General Nursing Council of Scotland was not established "for charitable purposes only." *Royal College of Surgeons of England* v. *National Provincial Bank, Ltd.* [1952] A.C. 631 was distinguishable from the present case. The last question was: Is the object of the council, which is not charitable in the legal sense "otherwise concerned with the advancement of . . . social welfare"? The question should be answered in the negative and the appeal should be dismissed.

LORD TUCKER and LORD KEITH OF AVONHOLM agreed.

LORD COHEN and LORD SOMERVELL OF HARROW dissented.

Appeal dismissed.

APPEARANCES: *Squibb*, Q.C., and *William Roots* (*Pontifex, Pitt & Co.*); *Cross*, Q.C., and *E. B. Stamp* (*Sharpe, Pritchard and Co.*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 308**

RATING: UNDERGROUND PETROL STORAGE TANKS: WHETHER "A BUILDING OR STRUCTURE"

Shell-Mex and B.P., Ltd. *v.* Holyoak (Valuation Officer)

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Keith of Avonholm and Lord Denning

28th January, 1959

Appeal from the Court of Appeal ([1958] 1 W.L.R. 331; 102 SOL. J. 216).

In accordance with licences issued by the local authority pursuant to the Petroleum Consolidation Act, 1928, a company constructed an underground petrol container beneath the pumps of a petrol station. The container consisted of a concrete base with brick walls 9 inches thick having a concrete rendering. On the base rested concrete cradles on which was placed a metal cylinder 13 feet 6 inches long by 7 feet in diameter capable of containing 3,000 gallons of petrol. The space round the outside of the cylinder was packed with dry sand and the whole was covered with slabs of reinforced concrete except for the manhole through which the cylinder was filled. The Lands Tribunal held that the brick and concrete structure was liable to be rated, but that the metal cylinder was not in the nature of "a building or structure" within class 4 of the Schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, being a movable piece of apparatus and, accordingly, was not liable to be rated as a "tank." The valuation officer appealed successfully to the Court of Appeal. The company appealed to the House of Lords.

VISCOUNT SIMONDS said that by s. 24 (1) of the Rating and Valuation Act, 1925: "For the purpose of the making or revision of valuation lists . . . the following provisions shall have effect with respect to the valuation of any hereditament . . . (*a*) All such plant or machinery in or on the hereditament as belongs to any of the classes specified in Sched. III to this Act shall be deemed to be a part of the hereditament; (*b*) Subject as aforesaid no account shall be taken of the value of any plant or machinery in or on the hereditament." By the Plant and Machinery (Valuation for Rating) Order, 1927, the classes of plant and machinery so deemed to be part of the hereditament included class 4 described as "the following parts of a plant or a combination of plant and machinery whenever and only to such extent as any part is, or is in the nature of, a building or structure." The items following included "tanks." The question was whether the metal container fell to be rated as part of the hereditament known as the Oaklands Filling Station. The metal cylinder was properly called a tank. Looked at by itself it was not, and it was not in the nature of, a structure or building. But it was said that when the metal container was put into the compartment the whole installation became a "tank" for the purposes of the Order. The question was whether there was a "tank" formed by the whole installation or a "tank" which was housed in a structure. The latter view was correct. Paramount weight should be given to the consideration that the metal container was identifiable as a "tank" whether placed above or below ground and by whatever structure it was protected. If it was a tank it was not, for rating purposes, to be regarded as part of the hereditament unless it was, or was in the nature of, a building or structure. There was no finding of fact to justify that conclusion. The appeal should be allowed.

LORD MORTON OF HENRYTON and LORD REID agreed.

LORD KEITH OF AVONHOLM and LORD DENNING dissented. Appeal allowed.

APPEARANCES: *Widgery*, Q.C., and *William Roots* (*Sydney Morse & Co.*); *Lyell*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 188**

Court of Appeal

AGRICULTURAL HOLDING: LANDLORD'S NAME INCORRECT IN NOTICE: VALIDITY

Frankland and Another *v.* Capstick

Lord Evershed, M.R., Sellers, L.J., and Roxburgh, J.

20th November, 1958

Appeal from Appleby County Court.

Shortly after the death of the tenant of an agricultural holding at Ravenstonedale in the County of Westmorland, his widow surrendered the tenancy to the landlord, Dr. Edward Percy Frankland. Negotiations with regard to claims for dilapidations and other matters followed between the parties and various agents representing them, including Edward Raven Percy Frankland, who acted on behalf of his father the landlord. No settlement was reached and the landlord applied for the appointment of an arbitrator. The solicitors who had acted for the landlord at all material times served a notice on the tenant of intention to make certain claims. The notice was expressed to be given by the solicitors "as solicitors for your landlord Raven Frankland." The widow submitted that the notice was invalid and the arbitrator stated a case for the opinion of the court. The county court judge decided in favour of the widow and the landlord appealed.

SELLERS, L.J., delivering the first judgment, referred to *Mountford* v. *Hodkinson* [1956] 1 W.L.R. 422, *Doe d. Armstrong* v. *Wilkinson* (1840), 12 Ad. & E. 743, and *Hankey* v. *Clavering* [1942] 2 All E.R. 311, and said that the notice was ambiguous. It was conceded by the tenant that s. 70 (2) of the Agricultural Holdings Act, 1948, did not preclude valid service of a notice by an agent. It was clear that this notice was given on behalf of the landlord and there was no suggestion that the widow had been in any way deceived by it or was under any misapprehension as to who the landlord was. This was a technical error and the notice was adequate.

ROXBURGH, J., and LORD EVERSHED, M.R., agreed.

APPEARANCES: *J. G. Shorrock* (*Hewitt, Woollacott & Chown*, for *Hague & Hague*, Sedbergh, Yorks); *L. Morris Jones* (*Corbin, Greener & Cook*, for *Willan & Willan*, Hawes, Yorks).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 204**

CONFLICT OF LAWS: CONTRACT: DISCHARGE

***In re* United Railways of the Havana and Regla Warehouses, Ltd.**

Jenkins, Romer and Willmer, L.JJ. 8th December, 1958

Appeal from Wynn Parry, J. ([1958] Ch. 724; 102 SOL. J. 106).

The *U* Company, a company incorporated in England in 1898, conducted a railway undertaking in Cuba. In 1921, it bought rolling stock worth $14,000,000 and decided to raise part of that sum in the United States of America under a scheme whereby fifteen-year 7½ per cent. trust certificates should be issued to the public through a trust company, which was a corporation of the Commonwealth of Pennsylvania. In February, 1921, the *U* Company caused to be incorporated in the United States a subsidiary company to which on 25th March, 1921, it sold the rolling stock. By a lease dated 18th April, 1921, and executed in New York, the subsidiary company as lessor leased to the *U* Company as lessee the rolling stock for a period of fifteen years for a rental payable twice yearly at the office of the trust company in Philadelphia. The rentals payable under the lease were to provide principal and interest reserved by the trust certificates, the lease forming security for those payments. By an agreement executed in New York contemporaneously with the lease, the subsidiary company assigned all its rights under the lease and interest in the rolling stock to the trust company as trustee for the certificate holders. By a further agreement dated 27th April, 1922, the subsidiary company resold the rolling stock to the *U* Company, "subject to and with the benefit of the lease and the agreement." From 14th February, 1931, the *U* Company ceased to pay the instalments due under the lease. In 1953, the Cuban Government, acting under certain decrees enacted for the purpose, acquired the management and control of the *U* Company's undertaking and assets by way of sale and purchase. By an agreement dated 5th September, 1953, the Cuban Government released the *U* Company from all responsibility in respect of liabilities arising under the trust certificates. On 4th March, 1954, the *U* Company went into voluntary liquidation and the successors of the trust company as trustee for the certificate holders lodged a proof, claiming the instalments that were payable under the lease. The liquidators rejected the proof. From this rejection the trustee appealed. Wynn Parry, J., allowed the appeal. The liquidators appealed. *Cur. adv. vult.*

JENKINS, L.J., said that the judgment he was about to deliver was that of ROMER, L.J., and himself. It was concurred in by WILLMER, L.J., except on certain aspects of the case, as to which Willmer, L.J., would deliver a separate judgment. The basic question in the case was whether at the commencement of the voluntary winding up of the company on 4th March, 1954, the company was indebted to the trustee under the covenant by the company for the payment of rentals contained in the lease of 18th April, 1921, of the rolling stock by the car company to the company, the benefit of which was assigned by the car company to the trustee under the trust agreement of even date. If this question fell to be determined according to English law, it would admit of only one answer. According to the express terms of the covenant the company was bound to pay the stipulated rentals, and it was not in dispute that such rentals were in fact in arrear and unpaid, as to the interest element since 14th August, 1934, and, as to the element representing instalments of capital, from and including the instalment due on 14th February, 1931, down to and including the final instalment due on 14th February, 1936, a total of eleven half-yearly instalments in all. It was no doubt true that the trustee could not in the end be entitled to any greater sum than was required to give full effect to the rights of the holders of the 331 outstanding certificates plus any sum properly allowable for its expenses, and, if it in fact received more than the amount so required, would have to account for the surplus to the liquidators. It was also true that this necessary limitation, coupled with questions as to the rates of exchange from dollars to pounds appropriate to the calculation, might well leave room for argument as to the proper way of quantifying the amount for which the trustee could prove in the winding up in respect of this indebtedness; but there could be no doubt whatever that it was a provable debt. Counsel for the liquidators did in fact raise a subsidiary argument of some weight as to the quantum of the trustee's proof, but according to his submission this question did not arise, for the simple reason that the right to receive and obligation to pay the debt outstanding under the lease was governed by the law of Cuba either (*a*) because the *situs* of the debt was in Cuba, or (*b*) because the proper law of the contract constituted by the lease was Cuban law. If he was right in claiming the application of Cuban law to the debt on either of these grounds, it followed, according to his argument, that under Cuban law the sale of the company's undertaking to the Cuban State on 1st December, 1953, had the effect of transferring the liability for the debt from the company to the Cuban State, or, in other words, brought about a compulsory novation by virtue of which the trustee was compelled to accept the Cuban State as its debtor in lieu of the company. In their lordships' judgment, however, even though the debt claimed had emerged from the contract and achieved a separate existence situate in Cuba, the proper law to apply in determining whether the obligation of the company under the lease was still subsisting or had been discharged was the proper law of the contract and not the *lex situs* of the debt due and payable arising under it. The question, therefore, arose for determination: what was the proper law of the lease? Wynn Parry, J., held that the proper law of the lease was Pennsylvanian, and the appellants had not persuaded them (Jenkins and Romer, L.JJ.) that he was wrong. It followed in their view that since, according to the law of Pennsylvania, the obligations of the *U* Company under the lease were continuing, the trust company could prove in the liquidation for a sum in respect of principal, premium and interest due sufficient to satisfy the

proper claims of the certificate holders, such sum, in dollars, to be converted into sterling at the rate of exchange prevailing at the date of the winding up. While accepting the respondents' contention that the proper law of the trust agreement and of the lease was not the law of Cuba, the court was not prepared, as at present advised, to accept their alternative suggestion that, had the proper law been Cuban, the relevant law to apply would nevertheless, by virtue of the *renvoi* doctrine, have been that of Pennsylvania. This view did seem to have been accepted by the judge and received some support from the judgment of the Privy Council, delivered by Lord Wright in *Vita Food Products Inc.* v. *Unus Shipping Co.* [1939] A.C. 277, at p. 292. This passage from the judgment of the Judicial Committee had, however, by no means escaped criticism. Had it been necessary to decide the point on the present appeal (which it was not), the court would have been disposed to hold that the principle of *renvoi* found no place in the field of contract; and accordingly that, if the parties to the lease here in question ought to be treated as having accepted Cuban law as the proper law of the contract, such law was the domestic law of Cuba and not the rules of the conflict of laws administered by the Cuban courts. The appeal would be dismissed.

WILLMER, L.J., said that he wished to make clear that he concurred in, and shared the responsibility for, the judgment which had just been delivered, except with regard to two points upon which he had the misfortune to differ from his brethren. In his opinion, however, the proper law of the lease and the contemporaneous agreement was Cuban. In the circumstances, however, this did not prevent the trust company from proving in the liquidation for a sum in respect of principal, premium and interest due. But in his (his lordship's) judgment, accepting the argument for the liquidators on this point, such sum, in dollars, was to be converted into sterling at the rates of exchange prevailing at the respective dates at which the instalments comprised in it fell due. Appeal dismissed. Leave to appeal.

APPEARANCES: *John Megaw*, Q.C., *Kenneth Mackinnon*, Q.C., and *Richard Hunt* (*Norton, Rose & Co.*); *R. O. Wilberforce*, Q.C., and *R. B. S. Instone* (*Herbert Smith & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[2 W.L.R. 251**

INCOME TAX: "FREE OF TAX" PAYMENTS: "PROVISION": WHEN "MADE"

In re The Duke of Westminster's Deed of Appointment; Kerr and Others *v.* Duchess of Westminster

Lord Evershed, M.R., Romer and Ormerod, L.JJ.
28th January, 1959

Appeal from Danckwerts, J.

Section 486 of the Income Tax Act, 1952, provides: "Subject to the provisions of this section, any provision, however worded, for the payment, whether periodically or otherwise, of a stated amount free of income tax, or free of income tax other than surtax, being a provision which—(*a*) is contained in any deed or other instrument, in any will or codicil, in any order of any court, in any local or personal Act, or in any contract, whether oral or in writing; and (*b*) was made before 3rd September, 1939; and (*c*) has not been varied on or after that date, shall, as respects payments falling to be made during any year of assessment the standard rate of income tax for which exceeds five shillings and sixpence in the pound, have effect as if for the stated amount there were substituted an amount equal to the appropriate fraction thereof." By deed of 19th February, 1930, made in consideration of his marriage with the defendant, the late Duke of Westminster, in exercise of the powers vested in him by a resettlement of 1901, irrevocably appointed by way of jointure to the defendant during her life a rentcharge of £6,000 to commence from his death to issue out of the settled hereditaments; and he further covenanted with the defendant that if the then intended marriage was solemnised, and if the defendant survived him, his executors and administrators would during her life pay to the defendant such yearly sum as with the jointure rentcharge would, after deduction of all income tax and surtax, leave the net yearly sum of £6,000. The marriage between the Duke and the defendant was solemnised the next day. The Duke died in 1953. On a summons taken out by the executors, Danckwerts, J., held that s. 486 of the Income Tax Act, 1952, did not apply, and that the defendant was entitled to be paid £6,000 free of income tax and surtax. The executors appealed.

LORD EVERSHED, M.R., said that at first sight it would seem that the question was not a difficult one; for by the deed "provision" was "made" for the payment of a "stated amount" free of income tax, that provision being contained in a deed made before 3rd September, 1939, and not afterwards varied. But it had been argued in the Court of Appeal, and in the court below (and before Danckwerts, J., the argument succeeded) that, upon more accurate use of language, it was not true to say, in the circumstances of this case, that provision for the payment of the sum in question was made before 3rd September, 1939. In the court below, the conclusion in favour of the respondent was largely influenced by *Berkeley* v. *Berkeley* [1946] A.C. 555, which Danckwerts, J., thought bound him to hold as he did. In his (his lordship's) judgment, however, there was nothing in the reasoning or the speeches in *Berkeley* v. *Berkeley* which bound the Court of Appeal to hold in favour of the respondent; and, the matter being treated therefore as *res integra*, the case fell clearly (as he thought) within the terms of the section, construed according to the ordinary standards of language. He would therefore, for those reasons, allow the appeal.

ROMER, L.J., delivered a concurring judgment.

ORMEROD, L.J., agreed. Appeal allowed. Leave to appeal.

APPEARANCES: *John Pennycuick*, Q.C., and *E. I. Goulding* (*William Charles Crocker*); *Charles Russell*, Q.C., and *Desmond Miller* (*Sydney Morse & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[2 W.L.R. 299**

LEASE: COVENANT TO REPAIR "MAIN WALLS": WHETHER WINDOWS PART OF MAIN WALLS

Holiday Fellowship, Ltd. *v.* Viscount Hereford

Lord Evershed, M.R., Romer and Ormerod, L.JJ.
28th January, 1959

Appeal from Harman, J.

The lessee's covenants in a lease of a dwelling-house included a covenant to maintain the demised buildings and the fixtures and fittings therein "(except the roofs and main walls of the dwelling-house)" in good repair and condition. By a complementary covenant the landlord covenanted "to keep the main walls roofs . . . in good repair and condition." The tenants took out a summons seeking a declaration that under those covenants the landlord was liable to paint and repair the windows. Harman, J., held that the landlord was not liable to keep in good repair and condition the windows and window frames of the demised premises. The tenants appealed.

LORD EVERSHED, M.R., said that the premises were a large building containing, on two of its fronts, at any rate, what might be described as bays, or similar structures, jutting out from the walls, in which were contained windows in the ordinary sense of that term. A question had arisen who was responsible for repair by way of painting of the wooden surrounds of the windows and the sashes. It was conceded by the tenants that, except in so far as there was an obligation expressed to be upon the landlord, the tenants must undertake repairs. But the tenants had contended that, in the absence of any specific reference to painting, or indeed to windows, the obligation fell upon the landlord, on the ground that the windows were, and should be treated, for the purposes of this lease, as part of the main walls. He wished to be a little careful in the meaning that he was attaching to the word "windows." He had described the bays or similar structures, which were made of the same material as the walls, in the ordinary sense of that term. The court was not concerned with any question of repair to the brick or stone structures containing the actual windows. For the purposes of this case and of the question raised in the originating summons, he took "windows" to mean, and to be confined to, the glass panels and the wooden framework and apparatus in which the glass was placed; and the question was whether, for the purposes of this lease, "main walls" ought to be treated as including the windows as he had defined them. He must confess that, looking at this matter without any guidance (or possibly the reverse) from authority, he (his lordship) would unhesitatingly say, in ordinary language, that the windows, as he had defined them, were distinct from the walls. No doubt they were *in* the walls. Walls might have eyes as well as ears. But he would say that they were, as physical things, distinct from the walls in which they were inserted; and that was the view, plainly,

of Harman, J. Various illustrations from ordinary conversational usage had been cited; and, to his (his lordship's) mind, it was plain that, apart (again) from the effect of any authority, the windows in the walls would be treated as something distinct from the walls themselves. But it had been argued, with force, by counsel for the tenants that certain authorities binding upon the court, being authorities of the Court of Appeal, put a different light on this matter. Reference had been made in this connection to *Boswell* v. *Crucible Steel Co.* [1925] 1 K.B. 119; *Ball* v. *Plummer* (*The Times*, 17th June, 1879); and *Taylor* v. *Webb* [1937] 2 K.B. 283, and reliance had also been placed on a passage in Woodfall on Landlord and Tenant, 25th ed., p. 760. But in his (his lordship's) judgment none of these authorities had a binding or conclusive effect. The question therefore came back to that of the construction of the lease and of asking and answering the question: were these windows as limited by his (his lordship's) definition, part of the main walls, within the meaning of the relevant clauses of the lease? Applying, to the best of his ability, the ordinary standards of common sense and interpretation of language, he (his lordship) concluded unhesitatingly that they were not; and taking that view (which was the view of Harman, J.) it followed that the appeal failed.

ROMER and ORMEROD, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *O'Connell Stranders* (*Eric P. Hannay*); *John L. Arnold*, Q.C. (*Nicholl, Manisty & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law.] **[1 W.L.R. 211**

Queen's Bench Division

PLEADING: TRESPASS: WHETHER PLAINTIFF MUST PLEAD NEGLIGENCE

Fowler *v.* Lanning

Diplock, J. 19th January, 1959

Preliminary point of law under R.S.C., Ord. 25, r. 2.

In an action based on trespass to the person the plaintiff's statement of claim alleged simply that on a certain date and at a certain place "the defendant shot the plaintiff," and that by reason thereof the plaintiff sustained personal injuries, particulars of which were given. The defendant by his defence traversed the allegations and objected that the statement of claim disclosed no cause of action on the ground that the plaintiff did not allege that the shooting was intentional or negligent.

DIPLOCK, J., said that he could summarise the law as he understood it from his examination of the cases as follows:

(1) Trespass to the person did not lie if the injury to the plaintiff, although the direct consequence of the act of the defendant, was caused unintentionally and without negligence on the defendant's part. (2) Trespass to the person on the highway did not differ in this respect from trespass to the person committed in any other place. (3) If it were right to say that negligence was a necessary ingredient of unintentional trespass only where the circumstances were such as to show that the plaintiff had taken upon himself the risk of inevitable injury (i.e., injury which was the result of neither intention nor carelessness on the part of the defendant), the plaintiff must to-day in this crowded world be considered as taking upon himself the risk of inevitable injury from any acts of his neighbour which, in the absence of damage to the plaintiff, would not in themselves be unlawful—of which discharging a gun at a shooting party in 1957 or a trained band exercise in 1617 were obvious examples. (4) The onus of proving negligence, where trespass was not intentional, lay upon the plaintiff, whether the action was framed in trespass or in negligence. It was but an illustration of the rule that he who affirms must prove, which lay at the root of our law of evidence. If the onus of proof of intention or negligence on the part of the defendant lay upon the plaintiff, then, under the modern rules of pleading, he must allege either intention on the part of the defendant, or, if he relied upon negligence, he must state the facts which he alleged constituted negligence. Without either of such allegations the bald statement that the defendant shot the plaintiff in unspecified circumstances with an unspecified weapon disclosed no cause of action. Leave to amend statement of claim.

APPEARANCES: *Ingram Poole* (*Barnes & Butler* for *J. W. Miller & Son*, Poole); *H. E. L. McCreery* (*Peacock & Goddard*, for *Trevanion, Curtis & Walker*, Bournemouth).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 241**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Buildings (Scotland) Bill [H.C.] [12th February.
Mock Auctions Bill [H.L.] [11th February.
To prohibit certain practices in relation to sales purporting to be sales by auction.

Read Second Time:—

Domicile Bill [H.L.] [12th February.
Marriages (Secretaries of Synagogues) Bill [H.C.] [12th February.

In Committee:—

County Courts Bill [H.L.] [12th February.
European Monetary Agreement Bill [H.C.] [12th February.
Overseas Resources Development Bill [H.L.] [12th February.
Rights of Light Bill [H.L.] [12th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Rating and Valuation Bill [H.C.] [12th February.
To postpone the coming into force of new valuation lists under Pt. III of the Local Government Act, 1948, and to restrict proposals for altering the current lists; to postpone the date as from which relief under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, can be terminated or reduced; and for purposes connected with the matters aforesaid.

Supreme Court of Judicature (Amendment) Bill [H.C.] [12th February.
To amend the law relating to the restriction of vexatious actions.

Read Second Time:—

All Saints Chelsea Bill [H.C.] [9th February.
Baking Industry (Small Establishments and Seasonal Resorts) Bill [H.C.] [13th February.
Birmingham Corporation Bill [H.C.] [9th February.
Bradford Corporation Bill [H.C.] [10th February.
Finsbury Square Bill [H.C.] [10th February.
Humber Bridge Bill [H.C.] [11th February.
Nuclear Installations (Licensing and Insurance) Bill [H.L.] [9th February.
Portsmouth Corporation Bill [H.C.] [11th February.
Railway Passengers Assurance Bill [H.C.] [10th February.
St. Neots Urban District Council (Commons) Bill [H.C.] [9th February.
Shell-Mex and B.P. (London Airport Pipeline) Bill [H.C.] [9th February.
Tees Valley and Cleveland Water Bill [H.C.] [9th February.
Wallasey Embankment Bill [H.C.] [10th February.

B. QUESTIONS

DAMAGE BY ANIMALS (CIVIL LIABILITY)

The ATTORNEY-GENERAL said that para. 5 of the Report of the Goddard Committee on Civil Liability for Damage Done by Animals was one of a number of proposals involving legislation made by the Committee, and it would only be practicable to deal with them as a whole. Some of the recommendations were controversial, and he could hold out no hope of legislation at present. [12th February.

STATUTORY INSTRUMENTS

Acute Rheumatism (Amendment) Regulations, 1959. (S.I. 1959 No. 213.) 4d.

County of Worcester (Electoral Divisions) Order, 1959. (S.I. 1959 No. 194.) 5d.

Darlington (Amendment of Local Enactments) Order, 1958. (S.I. 1959 No. 195.) 5d.

Export of Goods (Control) Order, 1959. (S.I. 1959 No. 161.) 1s. 5d.

Gretna - Stranraer - Glasgow - Stirling and Glasgow - Greenock-Monkton Trunk Roads (Ayr and Prestwick Bypass—Stage I) Order, 1959. (S.I. 1959 No. 217 (S.6).) 5d.

Gretna-Stranraer-Glasgow-Stirling Trunk Road (Ayr and Prestwick Bypass—Stage II) Order, 1959. (S.I. 1959 No. 218 (S.7).) 5d.

Importation of Plants (Amendment) Order, 1959. (S.I. 1959 No. 220.) 4d.

Importation of Potatoes Order, 1959. (S.I. 1959 No. 221.) 8d.

Importation of Raw Vegetables Order, 1958. (S.I. 1959 No. 219.) 5d.

London Traffic (40 m.p.h. Speed Limit) (No. 1) Regulations, 1959. (S.I. 1959 No. 228.) 5d.

London Traffic (Prescribed Routes) (Beaconsfield) Regulations, 1959. (S.I. 1959 No. 196.) 4d.

London Traffic (Prescribed Routes) (Deptford) Regulations, 1959. (S.I. 1959 No. 197.) 4d.

National Insurance and Industrial Injuries (Collection of Contributions) Amendment Regulations, 1959. (S.I. 1959 No. 207.) 5d.

Nurses (Area Nurse-Training Committees) Amendment Order, 1959. (S.I. 1959 No. 192.) 5d.

Draft **School Premises** (Standards and General Requirements) (Scotland) Regulations, 1959. 11d.

Stopping up of Highways (City and County Borough of Birmingham) (No. 3) Order, 1959. (S.I. 1959 No. 185.) 5d.

Stopping up of Highways (County of Berks) (No. 1) Order, 1959. (S.I. 1959 No. 184.) 5d.

Stopping up of Highways (County of Dorset) (No. 1) Order, 1959. (S.I. 1959 No. 186.) 5d.

Stopping up of Highways (County of Durham) (No. 2) Order, 1959. (S.I. 1959 No. 202.) 5d.

Stopping up of Highways (County of Essex) (No. 3) Order, 1959. (S.I. 1959 No. 199.) 5d.

Stopping up of Highways (County of Lincoln, Parts of Kesteven) (No. 1) Order, 1959. (S.I. 1959 No. 200.) 5d.

Stopping up of Highways (Norfolk) (No. 4) Order, 1951 (Variation) Order, 1959. (S.I. 1959 No. 187.) 5d.

Stopping up of Highways (City and County Borough of Plymouth) (No. 2) Order, 1959. (S.I. 1959 No. 203.) 5d.

Stopping up of Highways (City and County Borough of Portsmouth) (No. 1) Order, 1959. (S.I. 1959 No. 188.) 5d.

Stopping up of Highways (County of Salop) (No. 1) Order, 1959. (S.I. 1959 No. 201.) 5d.

Stopping up of Highways (County of Somerset) (No. 2) Order, 1959. (S.I. 1959 No. 183.) 5d.

Stopping up of Highways (County of Surrey) (No. 3) Order, 1959. (S.I. 1959 No. 204.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 2) Order, 1959. (S.I. 1959 No. 205.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 4) Order, 1959. (S.I. 1959 No. 206.) 5d.

Strategic Goods (Control) Order, 1959. (S.I. 1959 No. 190.) 1s.

NOTES AND NEWS

Miscellaneous

The President of The Law Society, Mr. Leslie E. Peppiatt, gave a luncheon party on 9th February at 60 Carey Street, London, W.C.2. The guests were the Danish Ambassador, Viscount Monckton of Brenchley, Lord Justice Sellers, Brig. Sir Norman Gwatkin, Mr. Gerald Gardiner, Q.C., Mr. Donald Tyerman, Sir Edwin Herbert, Mr. D. T. Hicks and Sir Thomas Lund.

Solicitors and executors faced with the practical problem of the disposal of testators' personal clothing are asked to remember that the W.V.S. is always in great need of clothing to meet special cases of hardship and for general emergency cases caused by flood, fire, accidents, etc., in any part of the country. We are informed that any local W.V.S. office will be pleased to make arrangements for the collection of any clothing given in this way.

OBITUARY

PROFESSOR A. D. HARGREAVES

Professor Anthony Dalzell Hargreaves, solicitor, of Solihull, died on 5th February, aged 54. He was admitted in 1929, but never practised, and for two years was lecturer in law at Leeds University. In 1931 he went to Birmingham as Reader in Law, and was appointed to the Barber Chair in 1950.

MR. J. MORTON

Mr. James Morton, retired solicitor, formerly of Keighley and Loxley, Yorkshire, died at his home in North Walsham, Norfolk, on 9th February.

SOCIETIES

At an ordinary general meeting of the ROYAL INSTITUTION of CHARTERED SURVEYORS to be held at 5.45 p.m. on Monday, 2nd March, 1959, Sir Sydney Littlewood, Vice-President of The Law Society, will give an address on "Implementing the Franks Report."

THE SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme: *March:* Tuesday, 3rd: Jazz evening at The Law Society. Refreshments at 6—6.30 p.m. Tuesday, 17th: General knowledge bee at the Pearl Assurance, 252 High Holborn. Tuesday, 24th: West Side Story; only a few tickets left. *April:* Tuesday, 7th: Debate at The Law Society, "That this House regrets the principles and practices of *apartheid*." Tuesday, 14th: Extraordinary general meeting at The Law Society to discuss the policy to be put forward by the Committee at the National Conference of Law Students. Tuesday, 21st: New members' meeting at The Law Society.

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